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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 6356

DOROTHY LYNCH ET AL., APPELLANTS

v.

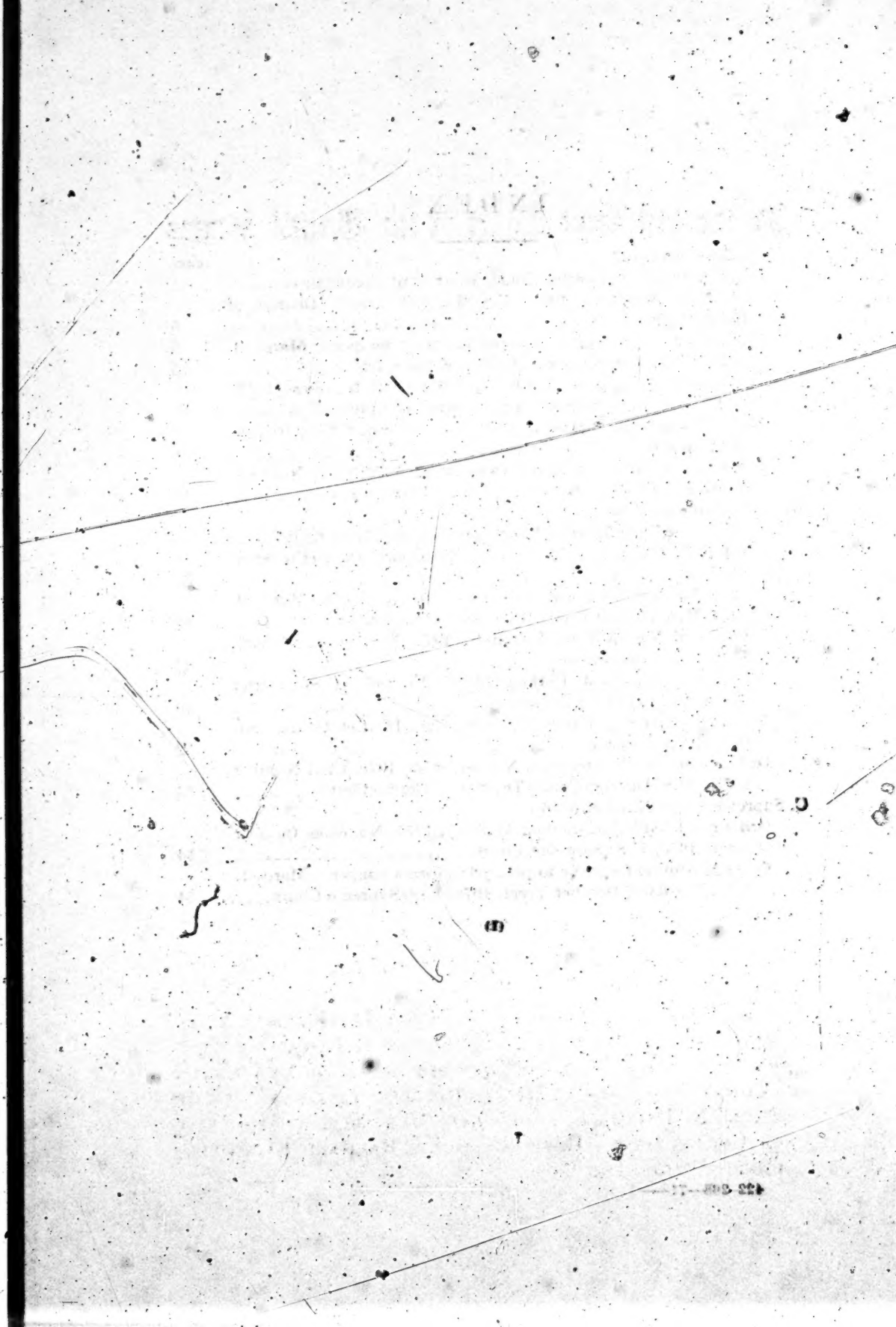
HOUSEHOLD FINANCE CORPORATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

FILED DECEMBER 28, 1970
PROBABLE JURISDICTION NOTED MARCH 1, 1971

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APPENDIX

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No. 6356

DOROTHY LYNCH, ET AL., APPELLANTS

v.

HOUSEHOLD FINANCE CORPORATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

3-JUDGE COURT

Hon. ROBERT P. ANDERSON, U.S.C.J.
Hon. WILLIAM H. TIMBERS, U.S.D.J.
Hon. ROBERT C. ZAMPANO, U.S.D.J.

Jury demand date:

CIVIL DOCKET

In the United States District Court
13737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED

vs.

HOUSEHOLD FINANCE CORPORATION; DAVID W. GOLDMAN, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; JACK FRIEDLER, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL THE SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; HOSPITAL OF ST. RAPHAEL EMPLOYEES CREDIT UNION, INC.

Attorneys for plaintiff: *Allen Sims*, 169 Church Street, New Haven, Conn.; *William H. Clendenen, Jr.*, 185 Church Street, New Haven, Conn.; *David M. Lesser*, 605 Congress Avenue, New Haven, Conn.; *Kenneth R. Kreiling*, 185 Church St., Rm. 805, New Haven, Conn. 06510.

Attorneys for defendant: *Richard G. Bell, Household Finance;* Goldman & Friedler, Tyler, Cooper, Grant, Bowerman & Keefe, 205 Church Street, New Haven, Conn.; *Gerald W. Brownstein*, Amicus Curiae o/b/o The Commercial Law League of America, 900 Chapel Street, New Haven, Conn., *Charles A. Pulaski, Jr.*, J. Friedler, HFC & Goldman, Tyler, Cooper, Grant, Bowerman & Keefe, 205 Church St., New Haven, Conn.

Basis of Action: Action claiming deprivation of rights under the U.S. Constitution; and seeking a declaratory judgment and an injunction against the enforcing and executing by defendants of Sections 52,279, 52,280, 52–329, and 52–304 of the Conn. General Statutes. Also seeks a 3-Judge Court.

Date	Proceedings
Mar. 4, 1970	Motion for Permission to Proceed in Forma Pauperis, filed. Order entered thereon granting same. Zampano, J.
Mar. 4, 1970	Complaint filed.
Mar. 4, 1970	Request for a three-judge court pursuant to Title 28, U.S.C. Sections 2281 and 2284, filed.
Mar. 4, 1970	Brief in Support of Plaintiff's Application for a Three-Judge Court, filed.
Mar. 4, 1970	Summons issued and together with copies of same and of complaint, Motion Order and Brief, handed to the Marshal for service.
Mar. 11, 1970	Marshal's Return Showing Service, filed. Summons & Complaint. Non-est Return re David W. Goldman.
Mar. 11, 1970	Designation of Judges, entered. The following judges are designated to hear and determine this cause: Hon. Robert P. Anderson, U.S.C.J.; Hon. William H. Timbers, U.S.D.J.; Hon. Robert C. Zampano, U.S.D.J. Lumbard, Chief Judge, U.S. Court of Appeals. M–3–11–70. Copies handed to plaintiffs' attorneys; Copies mailed to 3 Judges.
Mar. 13, 1970	Copies of file mailed to 3 Judges.
Apr. 3, 1970	Summons issued for service upon David W. Goldman, at the Request of Attorney Sims, and together with copies of same and of Complaint, Motion, Order and Brief, handed to the Marshal for Service.
Apr. 14, 1970	Marshal's Return Showing Service, field. Summons and Complaint-David W. Goldman.
Apr. 28, 1970	Appearance of Richard G. Bell, Esquire, entered for Defendants, Household Finance Corporation, et al. Copies sent to 3 Judges.

Date	Proceedings
May 5, 1970	Stipulation filed that the time within which Defendants Household Finance Corp. and David Goldman, may answer of otherwise move with respect to the Complaint be extended to and including May 29, 1970. Ordered Accordingly. Earl, C. Copies handed Atty Bell; Copies mailed to Plaintiff's Attorneys and to 3 Judges. M–5–6–70.
May 14, 1970	Appearance of Kenneth B. Kreiling, Esquire, entered for the Planitiff. Copies sent to 3 Judges.
May 13, 1970	The parties appeared in Court on May 13, 1970, by request of the three-judge court. Case assigned for pre-trial before Judge Zampano only on June 1, 1970 at 2:00 P.M. in New Haven. The Clerk is directed to enter a default against the defendant Jack Friedler (no appearance entered). Anderson, C. J., Timbers and Zampano, DD.J. m–5/14/70.
May 18, 1970	Appearance of Gerald W. Brownstein entered for defendant, Amigus Curiae, on behalf of The Commercial Law League of America. Copies to 3 Judges.
May 13, 1970	Default for failure to plead or otherwise defend entered against defendant Jack Friedler. Earl, C. M–5/25/70 Copies mailed to all counsel and to defendant Friedler. Copies to 3 Judges.
May 28, 1970	Appearance of Attorney Charles A. Pulaski, Jr., entered for defendants, Household Finance Corporation, and David W. Goldman.
May 28, 1970	Motion to Strike and Notice of Motion filed by Defendants, Household Finance Corporation and David W. Goldman.
June 1, 1970	After chambers hearing, stipulation was entered on the record, in which it was agreed in part by the attorneys present that they would frame the same issues for this case as were framed in the Toro case (Civil No. 13,738). On or before July 3, 1970 the defendants will file their motion to dismiss with briefs. On or before July 17, 1970 plaintiffs will respond. (See minutes for further details) Zampano, J. M–6/2/70 Copies of minutes mailed to 3 Judges.
June 9, 1970	Court Reporter's Transcript of Proceedings of June 1, 1970, filed. Sanders, Gale & Russell, R.
June 16, 1970	Endorsement on Defendants' (Household Finance Corp.) and (David W. Goldman) Motion to strike as follows: 6/15/70 Motion Off. Zampano, J. M–6/17/70. Copies mailed to counsel.
June 30, 1970	Motion to Set Aside Default and Notice of Motion, filed by Defendant, Jack Friedler. Copies sent to 3 Judges.
June 30, 1970	Appearance of Attorney's Richard G. Bell and Charles A. Pulaski, Jr., entered for Defendant, Jack Friedler. Copies sent to 3 Judges.

Date	Proceedings
July 2, 1970	Stipulation filed, that the time within which Defendants Household Finance Corporation and David Goldman may file their motion to dismiss and brief in support thereof be extended from July 3, 1970 to August 3, 1970. SO ORDERED. Zampano, J. M-7/6/70. Copies mailed to Counsel.
July 10, 1970	Ruling on Motion to Set Aside Default, filed and entered. The entry of Default, dated May 13, 1970, against Defendant Jack Friedler is hereby set aside and it is further ordered that on or before July 18, 1970, the said defendant shall file a memorandum of law on all issues currently pending in this case before the District Court of three Judges. Zampano, J. M-7/10/70, Copies mailed to Counsel. and to three Judges.
July 16, 1970	Compliance with Court Order, filed by Defendant Jack Friedler that he will join in and be bound by the Memorandum of Law to be submitted by Defendants Household Finance Corp., and David W. Goldman on or before August 3, 1970.
Aug. 3, 1970	Motion to Dismiss, filed by Defendants, Household Finance Corporation, David W. Goldman and Jack Friedler. Copies to 3 Judges.
Aug. 3, 1970	Memorandum of Law of Defendants Household Finance Corporation, David W. Goldman, and Jack Friedler in Support of Their Motion to Dismiss, filed. Copies to 3 Judges
Aug. 12, 1970	Stipulation filed, that the time within which Plaintiff's Brief in Opposition to Defendants' Motion to Dismiss may be filed, is extended from August 17, 1970 to September 17, 1970. Ordered Accordingly, Earl, C. M-8/12/70. Copies mailed to Counsel.
Sept. 15, 1970	Stipulation filed, that the time within which Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss may be filed, is extended from September 17, 1970 to October 1, 1970. Ordered Accordingly, Earl, C. M-9/15/70. Copies mailed to counsel of record.
Sept. 18, 1970	Per Judge Zampano's instructions to Miss Consiglio, the Motion to Dismiss is not to be placed on any Calendar.
Sept. 30, 1970	Plaintiff's Memorandum in Opposition to the Defendants' Motion to Dismiss, filed. Copies to the 3 Judges.
Oct. 22, 1970	Opinion, entered. Ordered that judgment be entered for defendants dismissing the complaint, but without costs. Anderson, U.S.C.J.; Timbers, U.S.D.J.; Zampano, U.S.D.J. M-10/23/70. Copies handed to Attys Clendenen and Pulaski; copies mailed to all other counsel.

Date	Proceedings
Oct. 22, 1970	Judg nent entered. Ordered that judgment be entered in favor of defendents, denying all relief sought by plaintiffs and dismissing the complaint; and that no costs shall be taxed against any party to this action. Anderson, U.S.C.J.; Timbers, U.S.D.J.; and Zampano, U.S.D.J. M-10/23/70 Copies handed to Attys Clendenen and Pulaski; copies mailed to all other counsel.
Nov. 19, 1970	Notice of Appeal to the Supreme Court of the United States, filed by Plaintiff. Copies mailed to all counsel and to 3 Judges.

In the United States District Court for the District of Connecticut

Civil Action No. 13737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

v.

HOUSEHOLD FINANCE CORPORATION; DAVID W. GOLDMAN, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; JACK FRIEDLER, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL THE SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; HOSPITAL OF ST. RAPHAEL EMPLOYEES' CREDIT UNION, INC., DEFENDANTS

COMPLAINT

(Filed March 4, 1970)

1. This is an action for declaratory and injunctive relief authorized by Title 42 U.S.C. Section 1983 to redress the deprivation of rights, privileges and immunities secured to the plaintiffs by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

2. Jurisdiction is conferred on this Court by Title 28 U.S.C., Section 1343.

3. This is a proper case for a determination by a three-judge district court pursuant to Title 28, U.S.C. Sections 2281 and 2284, in that it seeks an injunction to restrain the defendants, some of whom are state officials performing state functions, from applying, enforcing and executing Sections 52-279,

52–280, 52–329, 52–304 of the Connecticut General Statutes insofar as these statutes authorize and allow pre-judgment garnishment and attachment without prior notice, judicial hearing and the opportunity to be heard in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

4. This action seeks an injunction and declaratory judgment (Title 28 U.S.C. §§ 2201 and 2202) restraining the enforcement of and declaring unconstitutional Sections 52–279, 52–280, 52–304 of the Connecticut General Statutes on their face and as applied and used by the defendants on the grounds that said statutes and actions taken pursuant thereto deprive the Plaintiffs of the equal protection of the laws and due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

5. The named Plaintiff seeks, pursuant to Rule 23, Federal Rules of Civil Procedure, to represent those persons similarly situated, who constitute a class encompassing those residents of the State of Connecticut who have been and will be in the future, subjected to and are threatened with pre-judgment attachment and garnishment as authorized by Sections 52–279, 52–280, 52–329, 52–304 of the Connecticut General Statutes. The members of the class on behalf of whom this action is brought are similarly affected by the statutes complained of herein and are so numerous as to make it impracticable to bring each one of them individually before this Court. There are common questions of law and fact, and the claims of the named Plaintiff are typical of the claims of the class she represents, and the named Plaintiff will fairly and adequately protect the interests of the class. The defendants have acted or refused to act on grounds generally applicable to the class.

6. The named Defendant, Jack Friedler, pursuant to Rule 23, Federal Rules of Civil Procedure, represents the sheriffs, deputy sheriffs and constables in the State of Connecticut who are authorized to serve writs of attachment and garnishment. The members of this class are so numerous as to make it impracticable to bring each one of them individually before this Court, but they have common interests in the questions of law and fact to be litigated herein. The defenses of the named Defendant, Jack Friedler, are typical of the class he represents, and litigation by him will fairly and adequately protect the interests of the members of the class. The statutes complained

of herein are generally and equally applicable to every member of the class, making relief as against all appropriate.

7. The Plaintiff, Dorothy Lynch, is a citizen and resident of the United States and of the State of Connecticut.

8. The named Plaintiff works for St. Raphael's Hospital and earns $69.00 per week. She has no other source of income. These earnings must support the plaintiff and her youngest son fully and partially support her older son.

9. In February of 1968, the named Plaintiff opened a savings account in the Credit Union of St. Raphael's Hospital. Pursuant to the deposit agreement, $10.00 per week was deducted regularly from her salary and deposited in this account. On many occasions, between February, 1968 and the date of the attachment she had used the wages deposited in this account to meet necessary family expenses.

10. Defendant, Household Finance Corporation, acting through its manager and authorized agent, Robert Layton, is a corporation organized and existing under the laws of the State of Delaware and having an office and place of business in the Town of Hamden, County of New Haven, State of Connecticut, and is the plaintiff in a civil action against Dorothy Lynch, the named Plaintiff herein, which is pending in the Sixth Circuit Court of the State of Connecticut, and which was commenced by a writ of attachment, a copy of which is attached hereto as Exhibit A, and is hereby incorporated by reference.

11. Defendant, David W. Goldman, is an attorney licensed to practice law in the State of Connecticut, and represents Household Finance Corporation in the aforementioned civil action and who, as attorney and agent for Household Finance Corporation and acting in his capacity as a Commissioner of the Superior Court of the State of Connecticut, signed and issued a writ of attachment, pursuant to Section 52–329 of the Connecticut General Statutes, against the named Plaintiff Dorothy Lynch.

12. Defendant, Jack Friedler, is a deputy sheriff for the County of New Haven, State of Connecticut. Defendant Friedler, pursuant to the command contained in the writ of attachment, attached the named Plaintiff's savings account by serving the above-stated writ of attachment on the Hospital of St. Raphael Employees' Credit Union, Inc., the holder of the named Plaintiff's savings account.

13. Defendant Hospital of St. Raphael Employees' Credit Union, Inc., acting through its agent, Betty Shanley, President, is a corporation organized and existing under the laws of the State of Connecticut and having its place of business in New Haven, Connecticut. Said Defendant holds funds of the named Plaintiff which the latter deposited therein. Said Defendant accepted the aforementioned writ of attachment which completed the attachment of the named Plaintiff's funds.

14. On June 20, 1969, the Defendant, David W. Goldman, acting under color of the authority conferred upon him by the laws of the State of Connecticut as a Commissioner of the Superior Court of the State of Connecticut, and pursuant to Sections 52–329 and 52–279 of the Connecticut General Statutes issued a writ of attachment, commanding the Sheriff of the County of New Haven to attach to the value of $800.00. The Defendant, David W. Goldman, was acting and continues to act as an attorney representing the interests of Household Finance Corporation in the aforementioned civil action pursuant to which this writ of attachment was issued. (See Exhibit A)

15. On June 23, 1969, the Defendant, Jack Friedler, attached an account of the named Plaintiff at the Hospital of St. Raphael Employees' Credit Union, Inc. containing $494.83 and served on the named Plaintiff a copy of the aforementioned writ, summons and complaint.

16. Since June 23, 1969, the named Plaintiff, Dorothy Lynch, has been deprived of the use of her money in this account which is extremely important to the continued well-being and livelihood of herself and her children.

17. As a result of the attachment made on the named Plaintiff's accumulated earnings, she has suffered great hardship and mental and physical privation, being unable to draw upon this source of her wages to meet necessary expenses of clothing, rent, food, and medical expenses.

18. The named Plaintiff was given no notice prior to the attachment, nor was she given any opportunity to be heard either prior to or within a reasonable time after the attachment.

19. Pre-judgment attachment and garnishment are authorized by Sections 52–279, 52–280, 52–304 and 52–329 of the Connecticut General Statutes. These statutes permit attachment and garnishment at the commencement of a suit containing a

demand for money upon the order of an attorney representing a self-proclaimed creditor or other plaintiff, against the estate or goods of any person from whom the self-proclaimed creditor or other plaintiff claims money.

20. The statutes permit attachments or garnishments to be made whether a defendant in an action pursuant to which an attachment is made is a resident or non-resident of the state, without regard to the ease with which personal jurisdiction over a defendant could be obtained and without regard to the existence or non-existence of any necessity to protect a plaintiff by obtaining security for any judgment which may be rendered against a defendant.

21. The procedure authorized by the aforementioned statutes provides for no prior notice to the persons whose goods, estate, or debts are to be attached or garnished. There is no provision for a prior determination by an independent third party that a plaintiff's claim has any merit whatsoever or that the remedies of attachment and garnishment are in any way necessary to protect the interests of the plaintiff. A plaintiff in an action pursuant to which an attachment or garnishment is made is not required to verify the allegations of the complaint or to give oath or affirmation that the allegations are true.

22. The procedure authorized by the aforementioned statutes contains no provision permitting a defendant to have an attachment or garnishment released promptly on the ground that the plaintiff's claim is spurious or without merit, nor is there any statutory or common law procedure by which a defendant is insured the right to a prompt and summary hearing on the merits.

23. The aforementioned statutes on their face and as applied by the Defendants herein are unconstitutional in that the procedure established by their authority did cause and may in the future cause the named Plaintiff herein to be deprived of her liberty and property without due process of law, and to be denied the equal protection of the laws in that the cited Connecticut statutes invidiously discriminate against debtors and the poor all in violation of the Fourteenth Amendment to the United States Constitution.

24. The Plaintiffs have no adequate remedy at law, and the Defendants will continue to cause the Plaintiffs irreparable injury unless enjoined by this Court.

WHEREFORE, the Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction of this action and convene a three-judge court pursuant to Title 28 U.S.C. Sections 2281 and 2284.

2. Enter a final judgment pursuant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the Connecticut Statutes cited herein deprive the Plaintiffs of rights guaranteed to them by the Fourteenth Amendment to the Constitution of the United States and that the statutes are unconstitutional on their face and as applied by he Defendants herein.

3. Enter a permanent injunction restraining the Defendants from attaching or garnishing property belonging to or owed to the Plaintiffs under the authority of Sections 52–279, 52–280, 52–304, and 52–329 of the Connecticut General Statutes.

4. Enter a permanent injunction ordering the Defendants, their successors, agents, and employees to release the attachments and garnishments and allow the funds to be paid over to the Plaintiffs, and to return to the Plaintiffs, without cost, any personal property which they have attached.

5. Order such other and further relief as is deemed just and proper.

THE PLAINTIFFS.
By Their Attorneys,
ALLEN SIMS.
WILLIAM H. CLENDENEN, Jr.
DAVID M. LESSER.

VERIFICATION

NEW HAVEN, *February 26, 1970.*

STATE OF CONNECTICUT,
County of New Haven ss:

I, Dorothy Lynch, being first duly sworn upon oath according to law, hereby depose and say that I have read the foregoing Complaint, know the contents thereof, and that the statements contained herein are true and correct, to the best of my knowledge and belief.

Dorothy Lynch
DOROTHY LYNCH.

[Jurat Deleted]

EXHIBIT A

To the Sheriff of the County of New Haven, his Deputy or either Constable of the Town of New Haven, within said County,—Greeting.

By Authority of the State of Connecticut, You are hereby commanded to attach to the value of Eight Hundred and 00/100 dollars, the goods or estate of Dorothy Lynch, a resident of the City, Town, and County of New Haven, State of Connecticut (180 Canal Street) and her summon to appear before the 6th Circuit Court to be held at New Haven, in and for the 6th Circuit County of New Haven, on the 3d Tuesday of July A.D. 1969, then and there to answer unto Household Finance Corporation, a corporation organized and existing under the laws of the State of Delaware and having an office and place of business in the City, Town of Hamden, and County of New Haven, Conn., in a civil action wherein the Plaintiff complains and says;

FIRST COUNT

1. On and before June 20, 1969 the plaintiff lent $480.00 to the defendant

2. And paid, laid out and expended said sum for the defendant

3. And sold and delivered goods, wares and merchandise of the price and value of said sum to the defendant.

4. And bargained and sold goods, wares and merchandise of the price and value of said sum to the defendant

5. And performed work and rendered professional services of the price and value of said sum for the defendant

6. And furnished materials of the price and value of said sum to the defendant

7. And furnished board and lodging, washing, fuel and other articles of the price and value of said sum to the defendant

8. And used certain vehicles and equipment of the Plaintiff, by Plaintiff's permission, which use was reasonably worth said sum;

9. And performed professional services of the price and value of said sum for the Defendant;

10. And on said day the defendant had and received said sum to and for the use of the plaintiff.

11. And used and occupied certain lands, tenements and apartments of the plaintiff by his *their its* permission, which use and occupation were reasonably worth said sum;

12. And said sum was found to be due to the plaintiff from the defendant on an account then and there stated between them;

13. Yet though said sums are justly due to the plaintiff from the defendant the defendant has *have* never paid the same;

Written demand was made upon the defendant(s) for payment of the foregoing claim not more than thirty days nor less than three days prior to the date of this writ.

The plaintiff seeks satisfaction of the foregoing claim out of any debt accruing by reason of personal services rendered by the said defendant to

The plaintiff claim(s):

1. $525.00 damages.

2. An order on the defendant for reasonable weekly payments out of sums earned or to be earned by the defendant for services rendered or to be rendered by him in accordance with the statute made and provided.

And you are hereby commanded to leave a true and attested copy of this writ, and of the accompanying complaint at least twelve days before the session of the Court to which it is made returnable, with St. Raphael's Hospital Credit Union, a legal corporation, organized and existing under the laws of this State (or) of the United States, respectively; and located and having an office and principal place of business in said Town City of New Haven, as it is the Agent, Trustee, and Debtor of said defendant and has concealed in its hands the goods, effects and estate of said defendant and is indebted to her.

And you are further commanded to summon said garnishee to appear before said Court at the time and place first mentioned, then and there to disclose on oath whether he it has they have concealed in his its their hands the goods, effects or estate of said defendant or is are indebted to him them.

Nathan Frank of New Haven is recognized in $35.00 to prosecute, etc.

I, the subscribing authority, hereby certify that I have personal knowledge as to the financial responsibility of the plaintiff and deem it sufficient to pay the costs in this action.

Of this writ, with your doings thereon, make due service and return. Dated at New Haven, Conn. this 20th day of June, A.D. 1969.

DAVID W. GOLDMAN,
Commissioner of the Superior Court.

Please enter the appearance of GOLDMAN, MELNICK & WILLIAMS for the Plaintiff in the above entitled action.

NEW HAVEN, *June 23, 1969.*

STATE OF CONNECTICUT,
New Haven County, ss.

Then and there by virtue hereof, of the original writ, I attached as the property of the within named Defendant .....
all goods, effects, money and debts due to or belonging to the within named Defendant and in the hands or possession of the within *noted* garnishee St. Raphael's Hospital Credit Union, by leaving with ———, ———, a true and attested copy hereof, at least twelve days before the session of the Court to which ..... being herein named and described as the Agent, Trustee, Debtor, of said Defendant, and said garnishee having ..... inquired of by me, disclosed that *if* he was *they* were indebted to said Defendant at the date hereof in the sum of $——— and I made diligent search throughout my precincts for other goods and estate of said Defendant whereof to attach, but could find none.

And afterwards on the ——— day of ——— 19— I left with, at the usual place of abode of the within named Defendant, a true and attested copy of the within writ, summons and complaint with my said doings thereon endorsed.

The within and foregoing is a true copy of the original writ, summons and complaint with my doings thereon endorsed.

FEES

.... Miles Travel .....$....
....Copy .....
....Service .....
....Endorsement .....
Securing Property.....

Attest:
———, *Deputy Sheriff.*

No.....

Comm ..... Esq.

Judge.....

.....

vs.

.....

.....*Att'y for Pl'f.*

.....*Att'y for Def't.*

Returnable to...19—, at o'clock M.
Adjourned to...19—, at o'clock M.
Adjourned to...19—, at o'clock M.
Adjourned to...19—, at o'clock M.
Adjourned to...19—, at o'clock M.

.....

.....

.....

.....

Judgment, dated..... 19

Damages $
Costs.....
Execution .....
Total.....

Execution Issued.....19
Execution Renewed.....
.....

Court Fees, $... Paid...19
By .....
.....

PLAINTIFF'S DEFENDANT'S BILL OF COSTS

Writ.....
Officer's Fees.....
Prevailing Party's Indemnity.
Court Fee.....

Witnesses:

.... Trav. Miles. Att. Days
.... Trav. Miles. Att. Days
.... Trav. Miles. Att. Days
.... Trav. Miles. Att. Days
.... Trav. Miles. Att. Days

Taxed by

.....

Service of the within writ, summons & complaint, is hereby accepted for the defendant.

The defendant voluntarily agrees to pay the costs of this action whether or not the writ is returned to court; And further agrees that, at the option of the plaintiff, the writ may be returned to court any time after return date.

.....
Defendant

In the United States District Court for the District of Connecticut

Civil Action No. 13737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

v.

HOUSEHOLD FINANCE CORPORATION; DAVID W. GOLDMAN, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; JACK FRIEDLER, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL THE SHERIFFS DEPUTY, SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; HOSPITAL OF ST. RAPHAEL EMPLOYEES' CREDIT UNION, INC., DEFENDANTS

MOTION FOR PERMISSION TO PROCEED IN FORMA PAUPERIS

(Filed March 4, 1970)

Comes now the plaintiff, Dorothy Lynch, by counsel, Allen Sims, and moves this court, pursuant to Title 28 U.S.C.A. 1915, for permission to proceed in forma pauperis in filing the attached complaint for a declaratory judgment and injunctive relief under the Civil Rights Act, Title 42 U.S.C., Section 1983, and Title 28 U.S.C., Section 1343. An Affidavit in support of this motion is attached hereto.

DOROTHY LYNCH,
The plaintiff.
By ALLEN SIMS.
Her Attorney.

ORDER

The foregoing motion having been submitted to the Court and good cause appearing therefor, it is hereby

ORDERED: that plaintiff be permitted to proceed in forma pauperis in this Court.

Dated this 3d day of March, 1970.

ROBERT C. ZAMPANO,
Judge.

AFFIDAVIT

NEW HAVEN, *February 26, 1970.*

STATE OF CONNECTICUT,
County of New Haven, ss:

I, Dorothy Lynch, being first duly sworn according to law, state in support of my attached motion for permission to proceed in *forma pauperis:*

1. I am a plaintiff in this action.

2. My only source of income is my earnings of $69.00 (Sixty-Nine) dollars per week, and with these earnings I support myself and my youngest son fully, and give partial support to my older son.

3. I am deeply in debt, and have barely escaped eviction and extreme hunger as a result of the attachment of my small account.

4. I am unable, because of my poverty, to pay the costs of this action.

5. I am unable to give security.

6. I believe in good faith that I am entitled to the relief I am seeking.

7. The nature of the action is as follows:

The Affiant seeks a declaratory judgment that Sections 52–279, 52–280, 52–329, and 52–304 of the Connecticut General Statutes on their face and as applied in this case contravene her rights to due process and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution. The Affiant furthermore seeks a permanent injunction restraining the Defendants from attaching or garnishing property belonging to or owed to the Plaintiffs under the authority of Sections 52–279, 52–280, 52–329, and 52–304 of the Connecticut General Statutes, and a permanent injunction ordering the Defendants, their successors, agents and employers to release any prejudgment attachments and garnishments and allow the funds to be paid over to the Plaintiffs, and to return to the Plaintiffs without cost any personal property which they have attached.

Dorothy Lynch
DOROTHY LYNCH.

[Jurat Deleted]

In the United States District Court for the District of Connecticut

Civil No. 13737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

v.

HOUSEHOLD FINANCE CORPORATION, ET AL., DEFENDANTS

Civil No. 13738

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

v.

EUGENE A. CAMPOSANO, ET AL., DEFENDANTS

DESIGNATION OF JUDGES (Filed March 11, 1970)

Having been notified by the Honorable Robert C. Zampano, United States District Judge for the District of Connecticut, that an application has been filed in the above matter for relief pursuant to Title 28 United States Code Section 2281, pursuant to Title 28 United States Code Section 2284, I hereby designate the following judges, in addition to the Honorable Robert C. Zampano, to hear and determine said cause as provided by law: Honorable Robert P. Anderson, United States Circuit Judge and Honorable William H. Timbers, United States District Judge for the District of Connecticut.

It is hereby ordered that this order be filed in the above entitled cause in the United States District Court for the District of Connecticut.

Dated: New York, N.Y. March 9, 1970.

J. EDWARD LUMBARD,
Chief Judge, United States Court of Appeals for the Second Circuit.

In the United States District Court for the District of Connecticut

Civil Action No. 13737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

HOUSEHOLD FINANCE CORPORATION, ET AL., DEFENDANTS

MOTIONS TO DISMISS (Filed August 3, 1970)

The below named defendants hereby move to dismiss the above entitled action pursuant to Rule 12(b), Federal Rules of Civil Procedure, for each of the following reasons:

(a) The complaint alleges at most a deprivation of property only, of value less than $10,000; and, therefore, the Court lacks jurisdiction over the subject matter.

(b) The complaint fails to state a claim for which relief can be granted in that it fails to allege conduct by any person "under color of state law" within the meaning of Section 1983, Title 42, United States Code.

(c) The complaint fails to state a claim for which relief can be granted in that the relief sought is precluded by the provisions of Section 2283, Title 28, United States Code.

(d) The complaint fails to establish the qualifications of either the plaintiff or the defendant Jack Friedler as the representative of a class in accordance with the provisions of Rule 23, Federal Rules of Civil Procedure.

The Defendants,
Household Finance Corporation.
DAVID W. GOLDMAN.
JACK FRIEDLER.
By RICHARD G. BELL.

INTENDED ORDER DELETED

CERTIFICATE OF SERVICE

[Omitted in Printing]

In the United States District Court for the District of Connecticut

Civil No. 13,737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

HOUSEHOLD FINANCE CORPORATION; DAVID W. GOLDMAN, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; JACK FRIEDLER, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY AND AS REPRESENTATIVE OF ALL SHERIFFS, DEPUTY SHERIFFS, AND CONSTABLES OF THE STATE OF CONNECTICUT; AND HOSPITAL OF ST. RAPHAEL EMPLOYEES CREDIT UNION, INC., DEFENDANTS

Civil No. 13,738

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; CHARLES H. BARRETT, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY AND AS REPRESENTATIVE OF ALL SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; AND THE HAMDEN NATIONAL BANK, DEFENDANTS

JUDGEMENT

(October 22, 1970)

The above-entitled causes having been heard by a three-judge District Court and the said causes having been fully submitted; and

The Court having filed its opinion, constituting its findings of fact and conclusions of law herewith; it is ORDERED, ADJUDGED and DECREED:

(1) That judgment be, and it hereby is, entered in favor of defendants in both actions, denying all relief sought by plaintiffs and dismissing the complaints.

(2) That no costs shall be taxed against any party to these actions.

Dated at New Haven, Connecticut, this 22nd day of October, 1970.

ROBERT P. ANDERSON,
United States Circuit Judge.
WILLIAM H. TIMBERS
United States District Judge.
ROBERT C. ZAMPANO
United States District Judge.

In the United States District Court for the District of Connecticut

Civil No. 13737

DOROTHY LYNCH, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

HOUSEHOLD FINANCE CORPORATION; DAVID W. GOLDMAN, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; JACK FRIEDLER, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY AND AS REPRESENTATIVE OF ALL SHERIFFS, DEPUTY SHERIFFS, AND CONSTABLES OF THE STATE OF CONNECTICUT; AND HOSPITAL OF ST. RAPHAEL EMPLOYEES CREDIT UNION, INC., DEFENDANTS

Civil No. 13,738

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; CHARLES H. BARRETT, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY AND AS REPRESENTATIVE OF ALL SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; AND THE HAMDEN NATIONAL BANK, DEFENDANTS

OPINION

(October 22, 1970)

Before ANDERSON, *Circuit Judge*, and TIMBERS and ZAMPANO, *District Judges*.

Class actions by owners of savings and checking accounts seeking declaratory and injunctive relief on the ground their constitutional rights are impaired by the Connecticut prejudgment attachment and garnishment statutes. Complaints dismissed for lack of Civil Rights Act jurisdiction, 42 U.S.C. § 1983 (1964), 28 U.S.C. § 1343(3) (1964) and because of the prohibition against enjoining state court proceedings, 28 U.S.C. § 2283 (1964).

Allen Sims, William H. Clendenen, Jr., David M. Lesser and Kenneth R. Kreiling, New Haven, Conn., *for plaintiffs in both actions.*

Richard G. Bell and Charles A. Pulaski, Jr., of Tyler, Cooper, Grant, Bowerman & Keefe, New Haven, Conn., *for defendants Household Finance Corp., Goldman and Friedler in No. 13,737.*

Raymond J. Cannon, Daniel R. Schaefer and C. Michael Budlong, Asst. Attys. Gen., and Robert K. Killian, Atty. Gen., State of Connecticut, Hartford, Conn., *for defendant Barrett in No. 13,738.*

Robert S. Evans of Evans & Evans, New Haven, Conn., *for defendant The Hamden National Bank in No. 13,738.*

Eugene A. Camposano, East Haven, Conn., *defendant pro se in No. 13,738.*

Jerome A. Lacobelle, New Haven, Conn., *defendant pro se in No. 13,738.*

Gerald W. Brownstein, New Haven, Conn., *for The Commercial Law League of America, amicus curiae in both actions.*

TIMBERS, District Judge:

QUESTIONS PRESENTED

In these class actions brought by owners of a savings account and of a checking account, respectively, seeking declaratory and injunctive relief on the ground their constitutional rights are impaired by the Connecticut prejudgment attachment and garnishment statutes, threshold questions are presented as to

whether this Court has subject matter jurisdiction pursuant to the Civil Rights Act, 42 U.S.C. § 1983 (1964), and its jurisdictional implementation, 28 U.S.C. § 1343(3) (1964); and whether the actions are barred by the prohibition against enjoining state court proceedings, 28 U.S.C. § 2283 (1964).

For the reasons stated below, we hold in both actions that the Court lacks subject matter jurisdiction and the actions are barred by the anti-injunction statute. Judgments therefore must be entered for defendants dismissing the complaints in both actions.

Facts

The facts alleged in the respective complaints, which are taken as true on defendants' motions to dismiss, may be briefly summarized.

In the *Lynch* action (No. 13,737), on June 20, 1969 defendant Goldman, an attorney representing Household Finance Corporation in a civil action against Dorothy Lynch in the Connecticut Circuit Court for the Sixth Circuit, signed and issued, in his capacity as a Commissioner of the Superior Court, a writ of attachment commanding the attachment of Mrs. Lynch's assets to the value of $800. On June 23, 1969 defendant Friedler, a deputy sheriff for New Haven County, served the writ of attachment on the Hospital of St. Raphael Employees Credit Union, Inc., where Mrs. Lynch had a balance of $494.83 in her savings account. This completed the attachment of Mrs. Lynch's savings account.

In the *Toro* action (No. 13,738), on January 27, 1970 defendant Lacobelle, an attorney representing Eugene A. Camposano in a civil action against Norma Toro in the Connecticut Circuit Court for the Sixth Circuit, signed and issued, in his capacty as a Commissioner of the Superior Court, a writ of attachment commanding the attachment of Mrs. Toro's assets to the value of $700. On January 30, 1970 defendant Barrett, a deputy sheriff for New Haven County, served the writ of attachment on The Hamden National Bank, where Mrs. Toro had a balance of $103.99 in her checking account. This completed the attachment of Mrs. Toro's checking account.[1]

[1] Defendant Lacobelle's release of the attachment of Mrs. Toro's checking account on March 31, 1970 raises at least the suggestion of mootness of the *Toro* action, 6A Moore's Federal Practice ¶ 57.13, at 3072 (2nd ed. 1966)—an issue which we need not decide in view of our dismissal of the action on other grounds.

In both actions plaintiffs allege that they had no prior notice of the attachments, that they were given no opportunity to be heard prior to the attachments and that the deprivation of plaintiffs' use of the money in the accounts has caused them hardship.

Plaintiffs, purporting to represent those persons similarly situated who are said to constitute a class encompassing all Connecticut residents who have been or will be subjected to pre-judgment attachment or garnishment, claim that the Connecticut pre-judgment attachment and garnishment statutes[2] on their face and as applied to plaintiffs impair their rights under the due process and equal protection clauses of the Fourteenth Amendment.[3] They seek declaratory and injunctive relief, invoking the jurisdiction of this Court pursuant to the Civil Rights Act, 42 U.S.C. § 1983 (1964), and 28 U.S.C. § 1343(3) (1964).

Since the actions seek injunctive relief with respect to State statutes upon the ground of the unconstitutionality of such stat-

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[2] Four specific statutory provisions challenged by plaintiffs—Conn. Gen. Stat. §§ 52-279 (amended by P.A. 505 (1969)), 52-280 (1958), 52-329 (amended by P.A. 280 (1961)) and 52-304 (amended by P.A. 517, § 44 (1961))—are part of Connecticut's comprehensive statutory attachment plan set forth in Chapters 904 and 905 of the General Statutes. Conn. Gen. Stat. §§ 52-279 through 52-346 (1958).

To the extent here relevant, the pre-judgment attachment procedure is as follows. Attachment of a defendant's real and personal property (with certain exceptions not here applicable) is authorized in a civil action where money damages is demanded in the complaint. Attachment is initiated by plaintiff's attorney, acting as a Commissioner of the Superior Court, who signs and issues the writ of attachment, together with the accompanying summons and complaint. The three are usually incorporated in one document, known as a "writ, summons and complaint." No court order is required for the issuance of such writ of attachment, except in the case of garnishment or foreign attachment of a checking account in excess of $5,000.

Attachment is effected by attaching defendant's property; this is accomplished normally by service of the writ of attachment, together with the summons and complaint, by a sheriff, deputy sheriff or constable upon the person having possession of defendant's property or upon the record of defendant's ownership or upon the person indebted to defendant. The officer making the attachment is required to make personal or abode service upon defendant of a copy of the writ of attachment and accompanying papers.

Once property is attached, the attachment lien may be dissolved upon substitution of a bond with surety.

[3] Plaintiffs' due process claim is based upon *Sniadach* v. *Family Finance Corporation*, 395 U.S. 337 (1969). Their equal protection claim, for which they cite no direct authority, draws by analogy upon such decisions as *F. S. Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 415 (1920), and *Korematsu* v. *United States*, 323 U.S. 214 (1944).

utes, a special statutory district court of three judges was convened to hear and determine the actions pursuant to 28 U.S.C. §§ 2281 and 2284 (1964).

We do not reach the merits of plaintiffs' constitutional claims. Rather, we grant defendants' motions to dismiss both actions on the grounds that the Court lacks subject matter jurisdiction and the action are barred by the anti-injunction statute.

OPINION

I

The sole jurisdictional basis for the instant actions is Section 1 of the Civil Rights Act of 1871, now 42 U.S.C. § 1983 (1964), and it jurisdictional implementation, 28 U.S.C. § 1343(3) (1964). Sitting as a district court, we are bound by decisions of the Court of Appeals for this Circuit. *Lewis* v. *Rockefeller*, ——F.2d—— (2 Cir. 1970), slip op. 4197, at 4202 (September, 1 1970). We hold that the decision of the Court of Appeals for this Circuit in *Eisen* v. *Eastman*, 421 F.2d 560 (2 Cir. 1969), is dispositive of the threshold jurisdictional issue presented in both actions before us, namely, whether the rights here asserted, not being one of personal liberty but dependent for their existence upon the infringement of property rights, are outside the protection of 28 U.S.C. § 1343(3) (1964). 421 F.2d at 564 and 566. We hold they are.

The court in *Eisen* had before it a New York landlord's claim that the New York City Rent and Rehabilitation Law violated his constitutional right not to be deprived of property without due process of law by reducing rents to the amounts to which Eisen was restricted under the law there involved. The court held that "Since the complaint . . . alleged only the loss of money, the district court's conclusion that jurisdiction under the Civil Rights Act was not established . . . was thus correct." *Eisen* v. *Eastman*, *supra*, at 566.

Interference with a Connecticut resident's right to the uninterrupted use of her bank account, like the interdiction of a New Yorker's right to rely upon an undiminished amount of rental income from his property, has to do almost entirely with the loss of money; it involves, at most, only an incidental deprivation of personal rights in the sense of "personal liberty, not

dependent for its existence upon the infringement of property rights." *Hague* v. *CIO*, 307 U.S. 496, 531 (1939); *Eisen* v. *Eastman*, *supra*, at 564.

Access to funds held in a savings account or a checking account—the infringed property rights which Mrs. Lynch and Mrs. Toro claim unite the interests of their classes—is so close to the simple ownership of the money involved as to be virtually indistinguishable. Unless such a right to own or use one's money is closely linked by custom to an expenditure to secure or protect a right which is in some sense "personal" and incapable of monetary valuation, as might be the case with welfare payments and wages, it is outside the protection of § 1343 (3). Otherwise, any plaintiff could claim that money taken under color of state law is marginal to his capacity to maintain the barest minimum in food, shelter, health care or personal credit rating, thereby negating *Eisen*.

Escalera v. *New York City Housing Authority*, 425 F.2d 853, 864 (2 Cir.), *cert. denied*, —— U.S. —— (1970), may not be read to suggest that *Eisen* is to be ignored in this fashion or by reasoning that any deprivation of procedural due process is automatically "personal", since the underlying right in question there was the continued occupancy of scarce public housing.

The instant cases illustrate the confusion created by the argument that the use to which a specific plaintiff might put $494.83 or $103.99 which has been set aside in a savings account or a checking account makes any of the incidents of ownership of such accounts fundamental matters of "personal liberty." To be consistent, a suitable class could be defined only in terms of plaintiffs with like subjective intentions or identical degrees of emergency need for the precise amount of money left in their savings or checking accounts at the moment they were or might be garnished. The class would be not just all poor people with savings or checking accounts, but only those likely to feel the pinch of garnishment in the same manner through a loss of marginal sums necessary to safeguard incalculable personal interests. No such class could be defined as a practical matter. And the possible mootness of Mrs. Toro's own garnishment complaint would be enough to require dismissal even if there were jurisdiction.[4]

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[4] Note 1 *supra*.

II

In view of our decision that the instant actions must be dismissed for lack of Civil Rights Act jurisdiction, *supra* pp. 6–9, it is not necessary for us to reach other grounds urged for dismissal. Since the anti-injunction statute, 28 U.S.C. § 2283 (1964), pressed upon us by defendants, appears to be so uniquely applicable here, however, we rest our decision alternatively upon that ground.

Plaintiffs are asking this Court for injunctions to stay state court proceedings for which no express authorization exists. Service of garnishment papers by the deputy sheriffs not only supplied sufficient color of law to satisfy § 1983, according to plaintiffs, but such service also began state court proceedings. Cf. *Greater Continental Corp.* v. *Schechter*, 304 F. Supp. 325, 329–30 (S.D.N.Y. 1969), *appeal dismissed*, 422 F. 2d 1100 (2 Cir. 1970).

Although garnishment may be separated from the underlying in personam action, nevertheless it cannot be enjoined if the result would amount to "substantially interfering with the prosecution of a pending state proceeding." *Studebaker Corp.* v. *Gittlin*, 360 F. 2d 692, 696–97 (2 Cir. 1966). Leaving aside the possible mootness of Mrs. Toro's individual case,* if there is a valid Civil Rights Act class still subject to garnishment, then the interference with existing creditors' suits probably would be substantial.

Furthermore, despite all the controversy over this point in the context of criminal cases, see *McLucas* v. *Palmer*, 427 F.2d 239 (2 Cir. 1970), it is clear that our Circuit has not recognized § 1983 as an express exception to § 2283 in authorizing stays of state court civil proceedings. *Studebaker Corp.* v. *Gittlin*, *supra*, at 696–97; see also *Stevens* v. *Frick*, 372 F.2d 378 (2 Cir. 1967). Even if the Supreme Court should resolve the controversy by holding that an exception exists under certain circumstances involving criminal prosecutions,* such exception is not likely to apply to stays of commonplace civil proceedings already under way.

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* Note 1, *supra*.

* See arguments before the Supreme Court on April 29, 1970, as reported at 38 U.S.L.W. 3429–30 (U.S. May 5, 1970) in *Younger* v. *Harris*, *prob. juris. noted*, 398 U.S. 1013 (Jan. 13, 1969) (No. 163, 1968 Oct. Term; renumbered No. 4, 1969 Oct. Term,) *ass. for rehearing*, 399 U.S. 922 (June

Boone v. *Wyman*, 295 F.Supp 1143 (S.D.N.Y. 1969), *aff'd*, 412 F.2d 857 (2 Cir. 1969), *cert. denied*, 396 U.S. 1024 (1970), does not appear to be applicable here. *Boone* held that the *de novo* judicial remedy provided by the state made the state procedures entirely adequate so that the federal constitutional due process claim became superfluous and unnecessary; but in the present case, there is no question of the substantiality of the constitutional claim. See *Sniadach* v. *Family Finance Corporation*, 395 U.S. 337 (1969). Instead, the question here is whether there is a plaintiff or a class before this Court as to whom the issue is not either purely monetary, moot, or already on the way to adjudication in an adequate state forum. Upon the record before us, this question must be answered in the negative.

The foregoing constitute the Court's findings of fact and conclusions of law pursuant to Rule 52(a), Fed. R. Civ. P.

ORDER

ORDERED that judgments be entered for defendants dismissing the complaints, but without costs.

Dated at New Haven, Connecticut, this 22nd day of October, 1970.

ROBERT P. ANDERSON,
United States Circuit Judge.
WILLIAM H. TIMBERS,
United States District Judge.
ROBERT C. ZAMPANO,
United States District Judge.

29, 1970) (renumbered No. 2, 1970 Oct. Term); *Samuels* v. *Mackell*, *prob. juris. noted*, 393 U.S. 975 (Dec. 9, 1968) (No. 580, 1968 Oct. Term; renumbered No. 11, 1969 Oct. Term), *ass. for rehearing*, 399 U.S. 922 (June 29, 1970) (renumbered No. 7, 1970 Oct. Term); *Fernandez* v. *Mackell*, *prob. juris. noted*, 393 U.S. 975 (Dec. 9, 1968) (No. 844, 1968 Oct. Term; renumbered No. 20, 1969 Oct. Term), *ass. for rehearing*, 399 U.S. 922 (June 29, 1970) (renumbered No. 9, 1970 Oct. Term).

CIVIL DOCKET

In the United States District Court

13738

3-JUDGE COURT

Hon. ROBERT P. ANDERSON, U.S.C.J.
Hon. WILLIAM H. TIMBERS, U.S.D.J.
Hon. ROBERT C. ZAMPANO, U.S.D.J.

Jury demand date:

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED

vs.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; CHARLES H. BARRETT, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL THE SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; THE HAMDEN NATIONAL BANK

Attorneys for plaintiff: *Allen Sims*, 169 Church Street, New Haven, Conn. 06510; (1) *William H. Clendenen, Jr.* and (2) *Kenneth R. Kreiling*, 185 Church Street, New Haven, Conn. 06510; *David M. Lesser*, 185 Church Street, New Haven, Conn. 06510; *Blair C. Shick*, National Consumer Law Center-Amicus, Boston College Law School, 35 Commonwealth Avenue, Brighton, Mass. 02135; *Norman K. Janes* (Maurice Dancosse—Bruce N. Bernwald /Intervenor), Box D, Willimantic, Conn.

Attorneys for defendant: *Robert K. Killian*, Attorney General (For: Amicus Curiae); *C. Michael Budlong*, Asst. Attorney General, 30 Trinity Street, Hartford, Conn. 06115 (For: Chas. H. Barrett); *Robert S. Evans*, 900 Chapel St., New Haven, Conn. (FOR: HAMDEN NAT'L BANK); *Jerome A. Lacoobelle*, pro se, 138 Orange St., New Haven, Conn.; *Robert K. Killian*, Attorney General, *Daniel R. Schaefer* & *Raymond J. Cannon*, Ass't Attorney Gen'ls, 30 Trinity Street, Hartford, Conn. 06115 (For: Chas. H. Barrett, Ind. and) *Gerald W. Brownstein*, 900 Chapel Street, New Haven, Conn. (P.O. Drawer 1406) (as Amicus Curiae for Commercial Law Lea-

gue); *Eugene A. Camposano*, pro se, 553 Main St., East Haven, Conn.

Basis of Action: Action claiming deprivation of rights under the U.S. Constitution; and seeking a declaratory judgment and an injunction against the enforcing and executing by defendants of Sections 52–279, 52–280, 52–329 & 52–304 of the Conn. General Statutes; Also seeks a 3-Judge Court.

Date	Proceedings
Mar. 4, 1970	Motion for Pern ission to Proceed in Forma Pauperis, filed Order entered granting same. Zampano, J.
Mar. 4, 1970	Complaint filed.
Mar. 4, 1970	Request for a three-judge court pursuant to Title 28, U.S.C. Sections 2281 and 2284, filed.
Mar. 4, 1970	Brief in Support of Plaintiff's Application for Three-Judge filed.
Mar. 4, 1970	Summons issued and together with copies of same and of Motion, Order, Complaint and Brief, handed to the Marshal for service.
Mar. 11, 1970	Marshal's Return Showing Service, filed.—Summons & Complaint.
Mar. 11, 1970	Designation of Judges, entered. The following judges are designated to hear and determine this cause: Hon. Robert P. Anderson, U.S.C.J.; Hon. William H. Timbers, U.S.D.J.; and Hon. Robert C. Zampano, U.S.D.J. Lu n-bard, Chief Judge, U.S. Court of Appeals. M–3/11/70 Copies mailed to three judges; copies handed to plaintiffs attorneys.
Mar. 13, 1970	Copies of file mailed to three judges.
Mar. 18, 1970	Plaintiff's Memorandum of Law, filed.
Mar. 18, 1970	Affidavit of Norma Toro, filed.
Mar. 18, 1970	Affidavit of Francis J. Carling, filed.
Mar. 19, 1970	Hearing on the Merits. Motion of Attorney General of the State of Connecticut to appear as Amicus Curiae, filed. Motion granted. Appearance of C. Michael Budlong, Office of the Attorney General, for State of Conn., filed. Oral argument by Plaintiff 10:15–10:35. Court finds notice has been given to defendants in this case. This hearing is continued to 10:00 A.M. on March 25, 1970 before Judge Zampano, third floor courtroom. Answering briefs by the State of Conn. or any other defendant shall be filed in the Clerk's office on or before 5:00 P.M. on 4/8/70. Plaintiff given to 5:00 P.M. on April 14, 1970 to file reply brief. Court adjourned at 11:02. Anderson, U.S.C.J.; Timbers, U.S.D.J.; Zampano, U.S.D.J. M–3/19/70 Copies of documents filed and Order granting motion handed to 3 Judges. Copies of Motion and Order mailed to all counsel.

Date	Proceedings
Mar. 19, 1970	Appearance of Robert S. Evans, entered for Defendant, Hamden National Bank. Copies mailed to 3 Judges.
Mar. 24, 1970	Per oral request of Atty. Clendenen, FJC today called the defendants listed on the court calendar for the hearing to be held on March 25, 1970, before Judge Zampano, to notify them of this hearing date inasmuch as the mail strike was on and the calendars may not have reached the parties.
Mar. 25, 1970	Appearance of C. Michael Budlong, Assistant Attorney General for Charles M. Barrett, Sheriff, filed.
Mar. 25, 1970	Answer of Hamden National Bank, filed.
Mar. 25, 1970	Motion to Dismiss, filed by Defendant Barrett.
Mar. 25, 1970	After a chamber conference, Judge Zampano stated for the record that counsel have agreed to meet with him again 4/10/70 at 2 P.M. At that time all answers, motions, etc. must be filed as well as brief on all matters counsel desire to file briefs (except a brief on the merits). Any defendant who has not pled by 4/10 will be in default. Mr. Lacobelle ordered to advise the Court then whether he has or will release the attachment. Zampano, J. M–3/30/70
Apr. 10, 1970	Court Reporter's transcript of proceedings held on March 19, 1970, Hearing on the Merits, filed. (Russel, R.)
Apr. 10, 1970	Appearance of Jerome A. Lacobelle, Esq., entered for himself.
Apr. 10, 1970	Answer of defendant Jerome A. Lacobelle, filed.
Apr. 10, 1970	Appearance of Eugene A. Camposano entered for himself.
Apr. 10, 1970	Answer of the defendant Eugene A. Camposano, filed.
Apr. 16, 1970	Court Reporter's Notes of Proceedings of March 19, 1970, filed. Russell, R.
Apr. 16, 1970	Court Reporter's Notes of Proceedings of March 25, 1970, filed. Russell, R.
Apr. 16, 1970	Court Reporter's Notes of Proceedings of April 10, 1970, filed. Gale, R.
Apr. 20, 1970	Appearance of Robert K. Killian and Daniel R. Schaefer, entered for Defendant, Charles H. Barrett, Deputy Sheriff of New Haven County, individually, and as a representative of all the Sheriffs, Deputy Sheriffs and Constables of the State of Connecticut.
Apr. 20, 1970	Supplementary Brief, filed by Defendant.
Apr. 20, 1970	Answer, filed by Defendant.
Apr. 21, 1970	Court Reporter's transcript of proceedings held on April 10, 1970, filed. (Russell, R.)
Apr. 30, 1970	Plaintiffs' Brief in Opposition to Defendant's Motion to Dismiss, filed. Copies mailed to 3 Judges.
May 4, 1970	Brief of Amicus Curiae on Behalf of Plaintiffs, filed National Consumer Law Center. Copies sent to Three Judges.
May 7, 1970	Supplementary Brief In Opposition To Defendant's Motion to Dismiss, filed by Plaintiff. Copies mailed to three Judges.

Date	Proceedings
May 12, 1970	Appearance of Gerald W. Brownstein, entered for The Commercial Law League of America, Amicus Curiae. Copies to 3 Judges.
May 12, 1970	Brief of Amicus Curiae on Behalf of Defendants, filed. Copies to 3 Judges.
May 11, 1970	Order entered granting Attorney Gerald W. Brownstein to enter as Amicus Curiae on behalf of The Commercial Law League of America. Zampano, J. M–5/11/70. Copies mailed to all counsel and to 3 Judges.
May 12, 1970	Petition to Appear Amicus Curiae on behalf of The National Consumer La Center, filed. Copies to 3 Judges.
May 12, 1970	Appearance of Robert K. Killian, Atty. Gen., and Raymond J. Cannon, Asst. Atty. Gen., entered for defendant Chas. H. Barrett, Deputy Sheriff of New Haven County, Individually, and as Representative of all the Sheriffs, Deputy Sheriffs and Constables of the State of Connecticut. Copies to 3 Judges.
May 12, 1970	Brief of Defendant, Charles H. Barrett, Deputy Sheriff of New Haven County, Individually and as Representative of all the Sheriffs, Deputy Sheriffs and Constables of the State of Connecticut, filed. Copies to 3 Judges.
May 15, 1970	Reply Brief of Defendant Charles H. Barrett, Deputy Sheriff of New Haven County, Individually, and as Representative of all the Sheriffs, Deputy Sheriffs and Constables of the State of Connecticut, filed. Copies to 3 Judges.
May 13, 1970	Continued Hearing on Merits. Mr. Schaefer argues 10:35–11:10; Messrs. Sims & Clendenen argue 11:10–11:20; Rebuttal 11:30–11:55. Plaintiffs' Exhibit A marked for Identification. Decision Reserved. Defendants may file reply or rebuttal briefs by 5/20/70 at 5 P.M. Responding brief by Plaintiffs by 1 week later. Court adjourned at 12:00 Noon. Anderson, C.J.; Timbers, D.J.; Zampano, D.J. M–5/14/70.
May 14, 1970	Appearance of Kenneth R. Kreiling, entered for plaintiff. Copies to 3 Judges.
May 20, 1970	Supplemental Argument, filed by Defendant Charles H. Barrett. Copies to 3 Judges.
May 27, 1970	Plaintiff's Memorandum—Jurisdiction, filed. Copies to 3 Judges.
Aug. 11, 1970	Motion of Maurice Dancosse to Intervene, filed.
Aug. 11, 1970	Motion of Maurice Dancosse for Permission to Proceed in Forma Pauperis and Affidavit, filed.
Aug. 14, 1970	Notice of Motion re Motion of Maurice Dancosse to Intervene, filed. Copies to 3 Judges.
Aug. 14, 1970	Copies of Above Motions filed 8/11/70 mailed to 3 Judges.

Date	Proceedings
Aug. 20, 1970	Endorsement entered on Motion of Intervening Plaintiff, Maurice Dancosse, To Intervene, as follows: "This case has been fully submitted to the Court and is now under advisement. The motion to intervene is, therefore, denied. (8/19/70) Anderson, R. P., U.S.C.J. M-8/20/70. Copies mailed to 3 Judges; copies mailed to all counsel of record.
Aug. 25, 1970	Court Reporter's Notes of Proceedings of May 13, 1970, filed. Russell, R.
Aug. 31, 1970	Court Reporter's Transcript of Proceedings of March 25, 1970, filed. Sanders, Gale & Russell.
Oct. 22, 1970	Opinion entered. Ordered that judgment be entered for defendants dismissing the complaint, but without costs. Anderson, U.S.C.J.; Timbers, U.S.D.J.; Zampano, U.S.D.J. M-10/23/70. Copies handed to Attys Clendenen and Pulaski; copies mailed to all other counsel.
Oct. 22, 1970	Judgment entered. Ordered that judgment be entered in favor of defendants, denying all relief sought by plaintiffs and dismissing the complaint; and that no costs be taxed against any party to this action. Anderson, U.S.C.J.; Timbers, U.S.D.J.; Zampano, U.S.D.J. M-10/23/70. Copies handed Attys Clendenen and Pulaski; copies mailed to all other counsel.
Nov. 19, 1970	Notice of Appeal to the Supreme Court of the United States, filed by Plaintiff. Copies mailed to all counsel and to 3 Judges.
Nov. 20, 1970	Notice to Appeal to the Supreme Court of the United States, filed by Applicant for Intervention, Maurice Dancosse. Copies mailed all counsel and the three Judges.
Nov. 20, 1970	Motion for Leave to Appeal to the Circuit Court for the Second Circuit, and Affidavit of Maurice Dancosse, filed by Applicant for Intervention, Maurice Dancosse. Copies to 3 Judges.
Dec. 3, 1970	Ruling on Motion of Maurice Dancosse for leave to appeal in forma pauperis, entered. "The application of Dancosse to proceed in forma pauperis is denied." Anderson, C. J.; Timbers, D. J.; and Zampano, D. J. M-12/3/70. Copies mailed counsel and 3 Judges.

In the United States District Court for the District of Connecticut

Civil Action No. 13738

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

v.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; CHARLES H. BARRETT, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL THE SHERIFFS, DEPUTY SHERRIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; THE HAMDEN NATIONAL BANK, DEFENDANTS

COMPLAINT (Filed March 4, 1970)

1. This is an action for declaratory and injunctive relief authorized by Title 42 U.S.C. Section 1983 to redress the deprivation of rights, privileges and immunities secured to the plaintiffs by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

2. Jurisdiction is conferred on this Court by Title 28 U.S.C., Section 1343.

3. This is a proper case for a determination by a three-judge district court pursuant to Title 28 U.S.C. Sections 2281 and 2284, in that it seeks an injunction to restrain the defendants, some of whom are state officials performing state functions, from applying, enforcing and executing Sections 52–279, 52–280, 52–329, 52–304 of the Connecticut General Statutes insofar as these statutes authorize and allow pre-judgment garnishment and attachment of a checking account without prior notice, judicial hearing, and the opportunity to be heard in violation of the Due Process Clause and permit pre-judgment garnishment and attachment in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

4. This action seeks an injunction and declaratory judgment (Title 28 U.S.C. §§ 2201 and 2202) restraining the enforcement of and declaring unconstitutional Sections 52–279, 52–280, 52–329, 52–304 of the Connecticut General Statutes on their face and as applied and used by the defendants on the grounds

that said statutes and actions taken pursuant thereto deprives the plaintiff of equal protection of the law and due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

5. The named Plaintiff seeks, pursuant to Rule 23, Federal Rules of Civil Procedure, to represent those persons similarly situated, who constitute a class encompassing those residents of the State of Connecticut who have been and will be in the future, subjected to and are threatened with pre-judgment attachment and garnishment as authorized by Sections 52–279, 52–280, 52–329, 52–304 of the Connecticut General Statutes. The members of the class on behalf of whom this action is brought are similarly affected by the statutes complained of herein and are so numerous as to make it impracticable to bring each one of them individually before this Court. There are common questions of law and fact, and the claims of the named Plaintiff are typical of the claims of the class she represents, and the named Plaintiff will fairly and adequately protect the interests of the class. The defendants have acted or refused to act on grounds generally applicable to the class.

6. The named Defendant, Charles H. Barrett, pursuant to Rule 23, Federal Rules of Civil Procedure, represents the sheriffs, deputy sheriffs and constables in the State of Connecticut who are authorized to serve writs of attachment and garnishment. The members of this class are so numerous as to make it impracticable to bring each one of them individually before this Court, but they have common interests in the questions of law and fact to be litigated herein. The defenses of the named Defendant, Charles H. Barrett, are typical of the class he represents, and litigation by him will fairly and adequately protect the interests of the members of the class. The statutes complained of herein are generally and equally applicable to every member of the class, making relief as against all appropriate.

7. The Plaintiff, Norma Toro, is a citizen and resident of the United States and of the State of Connecticut.

8. The named Plaintiff works for Gant Shirtmakers and earns $85.00 per week. These earnings must support the Plaintiff and her son.

9. In October of 1969 the named Plaintiff opened a checking account with The Hamden National Bank in which she regu-

larly deposited a portion of her salary. Said account was used to meet necessary family expenses.

10. Defendant, Eugene A. Camposano, is the plaintiff in a civil action against Norma Toro, the named Plaintiff herein, which is pending in the Sixth Circuit Court of the State of Connecticut, and which was commenced by a writ of attachment, a copy of which is attached hereto as Exhibit A, and is hereby incorporated by reference.

11. Defendant, Jerome A. Lacobelle is an attorney licensed to practice law in the State of Connecticut and represents Eugene A. Camposano in the aforementioned civil action and who, as attorney and agent for Eugene A. Camposano and acting in his capacity as Commissioner of the Superior Court of the State of Connecticut, signed and issued a writ of attachment, pursuant to Section 52–329 of the Connecticut General Statutes, against the named Plaintiff, Norma Toro.

12. Defendant, Charles H. Barrett, is a deputy sheriff for the County of New Haven, State of Connecticut. Defendant Barrett, pursuant to the command contained in the writ of attachment, attached the named Plaintiff's checking account by serving the above-stated writ of attachment on The Hamden National Bank, the holder of the named Plaintiff's checking account.

13. Defendant, The Hamden National Bank, acting through its agent, Donald Calcagnini, President, is a corporation chartered under the laws of the United States of America and having its place of business in Hamden, Connecticut. Said Defendant holds funds of the named Plaintiff which the latter deposited therein. Said Defendant accepted the aforementioned writ of attachment which completed the attachment of the named Plaintiff's funds.

14. On January 27, 1970, the Defendant, Jerome A. Lacobelle, acting under color of the authority conferred upon him by the laws of the State of Connecticut as a Commissioner of the Superior Court of the State of Connecticut, and pursuant to Sections 52–329 and 52–279 of the Connecticut General Statutes, issued a writ of attachment pursuant to Section 52–329 of the Connecticut General Statutes, commanding the Sheriff of the County of New Haven to attach the property of Plaintiff to the value of $700.00. The Defendant, Jerome A. Lacobelle, was acting and continues to act as an attorney representing the

interests of Eugene A. Camposano in the aforementioned civil action pursuant to which this writ of attachment was issued. (See Exhibit A)

15. On January 30, 1970, the Defendant, Charles H. Barrett, attached the checking account of the named Plaintiff at The Hamden National Bank containing $103.99 and served on the named Plaintiff a copy of the aforementioned writ, summons and complaint.

16. On January 30, 1970, Defendant, The Hamden National Bank, charged the named Plaintiff's account $10.00 to cover their "legal expenses in this matter." (See Exhibit B which is attached hereto and is hereby incorporated by reference.)

17. As a result of the attachment made on the named Plaintiff's checking account, she has suffered great hardship, since she is unable to pay creditors to whose order she has drawn checks which her bank will not honor because of said attachment, her credit stands to be utterly destroyed and she is subject to the threat of criminal prosecutions for drawing checks which her bank will not honor.

18. The named Plaintiff was given no notice prior to the attachment, nor was she given any opportunity to be heard prior to the attachment,

19. Pre-judgment attachment and garnishment are authorized by Sections 52–279, 52–280, 52–304, and 52–329 of the Connecticut General Statutes. These statues permit attachment and garnishment at the commencement of a suit containing a demand for money upon the order of an attorney representing a self-proclaimed creditor or other plaintiff, against the estate or goods of any person from whom the self-proclaimed creditor or other plaintiff claims money.

20. The statutes permit attachments or garnishments to be made whether a defendant in an action pursuant to which an attachment is made is a resident or a non-resident of the state, without regard to the ease with which personal jurisdiction over a defendant could be obtained and without regard to the existence or non-existence of any necessity to protect a plaintiff by obtaining security for any judgment which may be rendered against a defendant.

21. The procedure authorized by the aforementioned statutes provides for no prior notice to the persons whose goods, estate, or debts are to be attached or garnished. There is no provision for a prior determination by an independent third

party that a plaintiff's claim has any merit whatsoever or that the remedies of attachment and garnishment are in any way necessary to protect the interests of the plaintiff. A plaintiff in an action pursuant to which an attachment or garnishment is made is not required to verify the allegations of the complaint or to give oath or affirmation that the allegations are true.

22. The procedure authorized by the aforementioned statutes contains no provision permitting a defendant to have an attachment or garnishment released promptly on the ground that the plaintiff's claim is spurious or without merit, nor is there any statutory or common law procedure by which a defendant is insured the right to a prompt and summary hearing on the merits.

23. The aforementioned statutes on their face and as applied by the Defendants herein are unconstitutional in that the procedure established by their authority did cause and may in the future cause the named Plaintiff herein to be deprived of her liberty and property without due process of law, and to be denied the equal protection of the laws in that the cited Connecticut statutes invidiously discriminate against debtors and the poor all in violation of the Fourteenth Amendment to the United States Constitution.

24. The Plaintiffs have no adequate remedy at law, and the Defendants will continue to cause the Plaintiffs irreparable injury unless enjoined by this Court.

WHEREFORE, the Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction of this action and convene a three-judge court pursuant to Title 28 U.S.C. Sections 2281 and 2284.

2. Enter a final judgment pursant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the Connecticut Statutes cited herein deprive the Plaintiffs of rights guaranteed to them by the Fourteenth Amendment to the Constitution of the United States and that the statutes are unconstitutional on their face and as applied by the Defendants herein.

3. Enter a permanent injunction restraining the Defendants from attaching or garnishing property belonging to or owed to the Plaintiffs under the authority of Sections 52-279, 52-280, 52-304, and 52-329 of the Connecticut General Statutes.

4. Enter a permanent injunction ordering the Defendants, their successors, agents, and employees to release the attachment and garnishments and allow the funds to be paid over to the Plaintiffs, and to return to the Plaintiffs, without cost, any personal property which they have attached.

5. Order such other and further relief as is deemed just and proper.

The PLAINTIFFS.
By Their Attorneys,
ALLEN SIMS.
WILLIAM H. CLENDENEN, Jr.
DAVID M. LESSER.

VERIFICATION

NEW HAVEN, *February 27, 1970.*

STATE OF CONNECTICUT,
County of New Haven, ss.

I, Norma Toro, being first duly sworn upon oath according to law, hereby depose and say that I have read the foregoing Complaint, know the contents thereof, and that the statements contained herein are true and correct, to the best of my knowledge and belief.

Norma Toro
NORMA TORO.

[Jurat Deleted]

EXHIBIT A

To the Sheriff of the County of New Haven, his Deputy, or City Sheriff or Constable of the town of East Haven, in said County,—Greeting:

By authority of the State of Connecticut, you are hereby commanded to attach, to the value of Seven Hundred ($700.00) Dollars, the goods or estate of Norma Toro, of 625 Main Street, in the Town of East Haven, County of New Haven, State of Connecticut, and her summon to appear before the Circuit Superior Court of Connecticut to be held at 8th Circuit, 377 Main Street, West Haven in and for the County of New Haven, on the Fourth Tuesday of February, 1970, at 10:00 o'clock in the forenoon, then and there to answer unto Eugene A. Camposano, of 553 Main Street, in the Town of East Haven, County of New Haven, State of Connecticut in a civil action, wherein the plaintiff(s) complains and says:

First Count:

1. On or about October 6, 1969, the defendant leased in writing the first floor premises of the plaintiff at 625 Main Street, East Haven, Connecticut, for a one year period at the monthly rental of $150.00 per month.

2. The defendant has not paid the rental due for January, 1970 and though requested, fails and refuses to do so.

3. Further, the defendant does not intend to comply with the remaining terms and conditions of her lease.

Second Count:

1. On and before ——— the plaintiff(s) lent $——— to the defendant(s)

2. And paid, laid out and expended said sum for the defendant

3. And sold and delivered goods, wares and merchandise of the price and value of said sum to the defendant

4. And bargained and sold goods, wares and merchandise of the price and value of said sum to the defendant

5. And performed work and rendered professional services of the price and value of said sum for the defendant

6. And furnished materials of the price and value of said sum to the defendant

7. And furnished board and lodging, washing, fuel and other articles of the price and value of said sum to the defendant

8. And used certain vehicles and equipment of the plaintiff , by Plaintiff's permission, which use was reasonably worth said sum;

9. And on said day the defendant had and received said sum to and for the use of the plaintiff

10. And performed professional services of the price and value of said sum for the defendant

11. And used and occupied certain lands, tenements and apartments of the plaintiff by plaintiff's permission, which use and occupation were reasonably worth said sum

12. And said sum was found to be due to the plaintiff from the defendant on an account then and there stated between them

13. Yet though said sums are justly due to the plaintiff from the defendant the defendant ha never paid the same.

Written demand was made upon the defendant for payment of the foregoing claim not more than thirty days nor less than three days prior to the date of this Writ.

Notice is hereby given to each defendant that the plaintiff(s) seek(s) satisfaction of any judgment rendered in favor of plaintiff(s) in this action from any debt accruing to each defendant by reason of his personal services.

The plaintiff claim :

1: $700.00 damages.

2. An order on the defendant for reasonable weekly payments out of sums earned or to be earned by the defendant for services rendered or to be rendered by defendant to said ——— ——— in accordance with the statute made and provided.

And you are hereby further commanded to leave a true and attested copy of this writ and of the accompanying complaint, at least twelve six days before the session of the Court to which it is made returnable, with The Hamden National Bank, 2992 Dixwell Avenue, Hamden, Connecticut. (Account #02200049) a legal corporation organized and existing under the laws of the State of Connecticut, and located and having an office and principal place of business in said City of Hamden and with or at its usual place of abode as it is the Agent(s), Trustee(s), and Debtor(s) of said defendant and has concealed in its hands the goods, effects and estate of said defendant and indebted to the defendant .

And you are further commanded to summon said garnishee to appear before said Court at the date and place first mentioned, then and there to disclose on oath whether said garnishee ha concealed in his its their hands the goods, effects or estate of said defendant , or is indebted to the defendant .

Anthony LoRicco of New Haven is recognized in $100.00 to prosecute, &c.

I, the subscribing authority, hereby certify that I have personal knowledge as to the financial responsibility of the plaintiff and deem the plaintiff, sufficient to pay the

costs in this action. Of this writ, with your doings thereon, make due service and return.

Dated at New Haven, Conn. this 27th day of January, 1970.

JEROME A. LACOBELLE, Commissioner of the Superior Court hereby enter appearance for the plaintiff in the above entitled action.

Town of HAMDEN, *January 30, 1970.*

STATE OF CONNECTICUT,
County of New Haven, ss.:

Then and there by virtue hereof, of the original writ, summons and complaint I attached as the property of the within named defendant(s)
all goods, effects, money and debts due to or belonging to the within named defendant and in the hands or possession of the within named garnishee by leaving with at the usual place of abode of
a true and attested copy hereof, at least twelve six days before the session of the Court to which this writ is returnable, said garnishee being herein named and described as the Agent , Trustee , and Debtor of said defendant , and said garnishee having been dully inquired of by me, disclosed that it he was they were indebted to said defendant at the date hereof in the sum of $....., and I made diligent search throughout my precincts for other goods and estate of said defendant whereof to attach but could find none.

And afterwards on the ..... day of ..... 19— I left with, at the usual place of abode of the within named defendant(s) true and attested copy (copies) of the within writ, summons and complaint with my said doings thereon endorsed.

The within and foregoing is a true copy (copies) of the original writ, summons and complaint with my doings thereon endorsed.

FEES

—— Miles Travel.... $——
—— Copies ..... ——
—— Service ..... ——
—— Endorsement ... ——
Securing Property.... ——
——
$——

Attest:
CHARLES H. BARRETT,
Deputy Sheriff, County of New Haven.

The defendant(s) voluntarily agrees to pay the costs of this action whether or not the writ is returned to court, and further agrees that, at the option of the plaintiff(s), the writ may be returned to court at any time after the return day.

.....

.....

Docket No.

COURT

at

Plaintiff(s)

against

Defendant(s)

WRIT, SUMMONS AND COMPLAINT

Common Counts and Garnishee Process

Attorney(s) for Plaintiff(s)

Office and Post Office Address

EXHIBIT B

THE HAMDEN NATIONAL BANK,
2992 DIXWELL AVENUE,
HAMDEN, CONNECTICUT 06518,
AREA CODE 203 288-7411

January 30, 1970.

MRS. NORMA TORO
625 Main Street
East Haven, Connecticut

Re: Norma Toro
vs.
Eugene Camposano

DEAR MRS. TORO: In connection with the above matter we have been served with a Writ of Attachment in the amount of $700, and accordingly we are holding the balance in your checking account which is $103.99.

We have charged your account $10.00 as per the enclosed debit to cover our legal expenses in this matter.

Further enclosed is a copy of the Attachment for your use. If you have any objections or legal reasons why this Attachment is invalid, please contact the office of Jerome Lacobelle.

Very truly yours,

E. K. RYDER,
Assistant Cashier.

EKR/vb
Enclosures

[Notation Deleted]

In the United States District Court for the
District of Connecticut

Civil Action No. 13738

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

v.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF CONNECTICUT; CHARLES H. BARRETT, DEPUTY SHERIFF OF NEW HAVEN COUNTY, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL THE SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES OF THE STATE OF CONNECTICUT; THE HAMDEN NATIONAL BANK, DEFENDANTS

MOTION FOR PERMISSION TO PROCEED IN FORMA PAUPERIS

(Filed March 4, 1970)

Comes now the Plaintiff, Norma Toro, by counsel, Allen Sims, and moves this court, pursuant to Title 28 U.S.C.A., 1915, for permission to proceed in forma pauperis in filing the attached complaint for a declaratory judgment and injunctive relief under the Civil Rights Act, Title 42 U.S.C., Section 1983, and Title 28 U.S.C., Section 1343. An Affidavit in support of this motion is attached hereto.

NORMA TORO
The Plaintiff.
By ALLEN SIMS,
Her Attorney.

ORDER

The foregoing motion having been submitted to the Court and good cause appearing therefor, it is hereby

ORDERED, that plaintiff be permitted to proceed in forma pauperis in this Court.

Dated this 3d day of March 1970.

ROBERT C. ZAMPANO,
Judge.

AFFIDAVIT

NEW HAVEN, *February 27, 1970.*

STATE OF CONNECTICUT,
County of New Haven, ss:

I, Norma Toro, being first duly sworn according to law, state in support of my attached motion for permission to proceed *in forma pauperis:*

1. I am a plaintiff in this action.

2. My principal source of income is my earnings of eighty-five dollars ($85.00) per week, and with these earnings I must fully support myself and my son. I also receive aid from the State Welfare Department.

3. I am in debt, and am liable to eviction as a result of the attachment of my small account.

4. I am unable, because of my poverty, to pay the costs of this action.

5. I am unable to give security.

6. I believe in good faith that I am entitled to the relief I am seeking.

7. The nature of the action is as follows:

The Affiant seeks a declaratory judgment that Sections 52–279, 52–280, 52–329, and 52–304 of the Connecticut General Statutes on their face and as applied in this case contravene her rights to due process and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution. The Affiant furthermore seeks a permanent injunction restraining the Defendants from attaching or garnishing property belonging to or owed to the Plaintiffs under the authority of Sections 52–279, 52–280, 52–329, and 52–304 of the Connecticut General Statutes, and a permanent injunction ordering the Defendants, their successors, agents and employers

to release any pre-judgment attachments and garnishments and allow the funds to be paid over to the Plaintiffs, and to return to the Plaintiffs without cost any personal property which they have attached.

Norma Toro
NORMA TORO.

Subscribed and sworn to before me on this 27th day of February, 1970.
ALLEN SIMS

In the United States District Court for the District of Connecticut

Civil Action No. 13738

NORMA TORO ET AL., PLAINTIFFS

v.

EUGENE A. CAMPOSANO, ET AL., DEFENDANTS

AFFIDAVIT

(Filed March 18, 1970)

NEW HAVEN, *March 16, 1970.*

STATE OF CONNECTICUT,
County of New Haven, ss.

NORMA TORO, being duly sworn, deposes and says that:

1. She is 31 years old, a citizen of the United States and a resident of the Town of East Haven, County of New Haven, State of Connecticut.

2. She is the mother of Pedro Luna who is 13 years old, a minor citizen of the United States who is a resident of the Town of East Haven, County of New Haven.

3. She is the head of her household having sole responsibility for the support of her family.

4. She was divorced two years ago and her ex-husband does not contribute to the support of Mrs. Toro and her son.

5. Although she has been employed since she came to Connecticut approximately two years ago, she has had to rely on some asisstance from the State Welfare Department in order to sustain her family.

6. She is presently employed by Gant Shirtmakers of New Haven, Connecticut, for whom she has worked for about six months.

7. Gant has been training her for a supervisory position in their stitching department.

8. She has performed well in this position and now supervises approximately 40 employees in the stitching department.

9. Because her employment has worked out so well, she believes that it should not be long before she is able to be completely self-sustaining and no longer be dependent upon aid from State Welfare.

10. On or about October 6, 1969, Mrs. Toro entered into a purported one year lease agreement with Eugene A. Camposano.

11. As a result of numerous breaches of the lease agreement by Defendant Camposano, his agents, partners, or employees, and as a result of numerous housing code violations, Mrs. Toro was forced to find another place to live at the end of January, 1970.

12. Mrs. Toro stopped payment on her January rent payment and allowed her landlord to keep her security deposit (which was in the amount of one month's rent) for her occupancy of the premises during January, 1970.

13. Defendant Eugene A. Camposano instituted a civil action in the Circuit Court of Connecticut by garnishee process and garnished her checking account at The Hamden National Bank on January 30, 1970.

14. Defendant Camposano alleged in his complaint nonpayment of rent and breach of lease and claimed $700.00 damages.

15. Mrs. Toro has a checking account with The Hamden National Bank.

16. She used this account to deposit her weekly wages and pay her necessary living expenses.

17. At the time of the garnishment, Mrs. Toro had $103.99 in her account.

18. As a result of the garnishment of Mrs. Toro's account, all her outstanding checks were returned to the payees unpaid.

19. Said checks were payable to the American Finance Company, W. T. Grants (two checks) and Relax-a-Cisor.

20. When these checks were returned, the payees demanded immediate cash payments from Mrs. Toro.

21. She does not have sufficient funds to pay these bills with cash.

22. Two of the checks that were returned unpaid were to creditors who hold a security interest in property on which Mrs. Toro is making payments.

23. The garnishment of her checking account has put her in default of her obligations to these creditors and they have a right to immediate possession of this property.

24. The default created by the non-payment of her check to American Finance not only gives that creditor the right to repossess her automobile, but also the option of calling her note and demanding the full amount owed for immediate payment.

25. On January 30, 1970, The Hamden National Bank wrote Mrs. Toro a letter informing her of the garnishment and of a $10.00 charge the bank assessed her as "legal expenses."

26. The summary garnishment has caused Mrs. Toro great financial upset and she stands to have her credit utterly destroyed by the actions of the Defendants.

27. Mrs. Toro has valid defenses to the civil action instituted by Defendant Camposano.

28. In response to a motion made by Defendant Camposano in the pending state civil action, Mrs. Toro filed a Disclosure of Defense which describes her defenses in said action and is attached hereto and hereby incorporated by reference.

Norma Toro
NORMA TORO.

[Jurat Deleted]

Eighth Circuit Court at West Haven

No. CV8–702–9353

EUGENE A. CAMPOSANO

v.

NORMA TORO

DISCLOSURE OF DEFENSE

(March 16, 1970)

The attorney for the defendant believes that bona fide defenses exist to the plaintiff's actions and that such defenses will be made.

The nature of the defenses are:

That plaintiff maintained the premises at 625 Main Street, East Haven, Connecticut in an untenantable condition in breach of the lease agreement between the plaintiff and defendant and therefore no lease existed between the parties and no rent was or is due and owing; that as a result of many material and continuing breaches of the lease by the plaintiff no lease existed between the parties and no rent was or is due and owing; that no lease existed between the parties by reason of a failure of consideration on the part of the plaintiff, and therefore no rent was or is due and owing; that the purported lease between the parties contained unconscionable provisions which denied the defendant the quiet possession of her premises and therefore any purported lease between the parties is unenforceable and therefore no rent was or is due and owing; that the amount of monthly rent claimed by the plaintiff, in light of the condition of the premises and purported terms under which they were let was unconscionable and therefore unenforceable and therefore no rent was or is due and owing; that the plaintiff maintained said premises in such condition that they violated the Housing Code of the City of West Haven and any purported lease for said premises was void and of no effect as against public policy; and that the parties to the lease agreement agreed to a termination of said lease in the month of January, 1970, effective at the end of January, 1970.

In addition the attorney for the defendant believes that the defendant has a set off against the plaintiff's claim which will be raised involving the security deposit which the defendant paid over to the plaintiff.

Furthermore the attorney for the defendant believes the defendant to have valid counterclaims against the plaintiff for work performed and rendered to the plaintiff and for excess rents paid over to the plaintiff.

THE DEFENDANT.

By

ALLEN SIMS

Her Attorney.

CERTIFICATION

[Deleted]

In the United States District Court for the District of Connecticut

Civil Action No. 13738

NORMA TORO ET AL., PLAINTIFFS

v.

EUGENE A. CAMPOSANO ET AL., DEFENDANTS

AFFIDAVIT

(Filed March 18, 1970)

NEW HAVEN, *March 16, 1970.*

STATE OF CONNECTICUT
County of New Haven, ss:

In an effort to secure the posting of a surety bond pursuant to § 52–304 of the Connecticut General Statutes, to release the pre-judgment garnishment of $103.99 in the checking account of Mrs. Norma Toro, Francis J. Carling telephoned the bonding and insurance companies in New Haven, Connecticut. The responses received are described below.

1. In a telephone conversation on March 13, 1970 with an agent of the M. G. Wilson Agency, 129 Church Street, New Haven, I was informed that this company does not deal in such bonds because there "is no market for them," since insurance companies generally will not write them for agents.

2. In a telephone conversation on March 12, 1970 with Mr. Harry Anderson of The Harry N. Anderson Agency, 10 Pine Orchard Road, Branford, I was informed that this company does not write bonds for the release of garnishments.

3. In a telephone conversation on March 12, 1970 with a Miss Bolash, an agent of the Condon Insurance Company, 47 College Street, New Haven, I was informed that this company requires 100% collateralization for a bond for the release of a garnishment.

4. In a telephone conversation on March 12, 1970 with a Mrs. Williams, an agent of The Joseph Golden Insurance Agency, Inc., 95 Crown Street, New Haven, I was informed that this company rarely writes bonds for the release of garnishments since their requirement of 100% collateralization makes such bonds "not sensible" for their customers.

5. In a telephone conversation on March 12, 1970 with Mrs. Kennedy of the Kennedy Agency, 1260 Dixwell Avenue, Hamden, I was informed that this company requires 100% collateralization for bonds for release of garnishment.

6. In a telephone conversation on March 12, 1970 with Mr. James P. Laudicina of The James P. Laudicina Agency, 908 Orange Avenue, West Haven, I was informed that this company requires 100% collateralization of bonds for the release of garnishments, except when the bond is requested by one of their regular customers.

7. In a telephone conversation on March 12, 1970 with an agent of the P. A. Leonardi Company, 900 Chapel Street, New Haven, I was informed that this company requires 100% collateralization of bonds for the release of garnishments. The agent stated that she had consulted Mr. P. A. Leonardi before giving me this information.

8. In a telephone conversation on March 12, 1970 with an agent of the T. H. Fitzsimmons Agency, 205 Church Street, New Haven, I was referred to the company which writes their bonds, The Travelers Insurance Company, 121 Whitney Avenue. In a telephone conversation on the same date with an agent of the latter company, I was informed that 100% collateralization of such a bond would be required.

9. In a telephone conversation on March 12, 1970 with an agent of Mathog and Company, Inc., 419 Whalley Avenue, New Haven, I was informed that this company will only write such bonds for their regular customers.

10. In a telephone conversation on March 12, 1970 with Mr. David North of North's Insurance Agency, Inc., 242 Orange Street, New Haven, I was informed that this company requires 100% collateralization for such bonds when they are requested by individuals, rather than corporations.

11. In a telephone conversation on March 13, 1970 with a Mr. Barnes, an agent of Herman and Rice, Inc., 261 Bradley Street, New Haven. I was informed that this company does not write such bonds, and that to the agent's knowledge the companies that do write them require 100% collateralization of such bonds.

12. In a telephone conversation on March 13, 1970 with an agent of the Podoloff-Zimmerman Insurance Agency, Inc., 95 Crown Street, New Haven, the agent expressed doubt that his

company would write such a bond for an individual who was not one of their regular customers.

13. In a telephone conversation on March 13, 1970 with Mr. Abraham Silverman, of The Abraham Silverman Agency, 265 Church Street, New Haven, I was informed that it was his practice, and to his knowledge the practice in the industry in general, to require 100% collateralization for such bonds.

14. In a telephone conversation on March 13, 1970 with a Mr. Galinas, an agent of Thompson and Peck, Inc., 321 Whitney Avenue, I was informed that this company does not write such bonds at all.

15. In a telephone conversation on March 13, 1970 with an agent of the West Haven Insurance Center, 588 Campbell Avenue, West Haven, I was informed that this company has no experience with writing such bonds, because customers have been unwilling in the past to supply the 100% collateral which this company requires. The agent also stated that he knew of no company in the New Haven area which would write such a bond with less than 100% collateralization.

16. In a telephone conversation on March 12, 1970 with an agent of the William M. Adams Agency, 1210 Dixwell Avenue, Hamden, I was informed that this agency does not write bonds for the release of garnishments.

17. In a telephone conversation on March 13, 1970 with an agent of Marvin H. Yudkin Real Estate and Insurance, 1 Broadway, North Haven, I was informed that this agency does not deal in such bonds, because "there is no insurance company to place them with."

FRANCIS J. CARLING.

[Jurat Deleted]

In the United States District Court for the District of Connecticut

Civil Action No. 13738

NORMA TORO, ON BEHALF OF HERSELF AND ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

EUGENE A. CAMPOSANO, ET AL., DEFENDANTS

MOTION TO DISMISS

(Filed March 25, 1970)

The defendant CHARLES H. BARRETT, DEPUTY SHERIFF OF NEW HAVEN COUNTY, individually, and as representative of all the sheriffs, deputy sheriffs and constables of the State of Connecticut hereby moves the Court to dismiss the Complaint for the following reasons:

1. The Complaint fails to state a claim against the defendant Charles H. Barrett, Deputy Sheriff of New Haven County, upon which relief can be granted.

2. The allegations of the Complaint are insufficient in law and in fact to show the jurisdiction of the Court.

CHARLES H. BARRETT,
Deputy Sheriff of New Haven County.
Defendant.

By ROBERT K. KILLIAN,
Attorney General.
C. MICHAEL BUDLONG,
Assistant Attorney General.

CERTIFICATION

[Omitted in Printing]

In the United States District Court for the District of Connecticut

Civil No. 13,738

NORMA TORO ET AL., PLAINTIFFS

v.

EUGENE A. CAMPOSANO, ET AL., DEFENDANTS

The motion of Maurice Dancosse, an applicant for intervention in this case whose application was heretofore denied, for leave to appeal in forma pauperis from said denial to the United States Court of Appeals for the Second Circuit is also denied.

Dancosse first sought to intervene after the Toro case had been heard and fully submitted and while the court had the case under advisement. The matters to be decided in the Toro case did not directly concern or affect the legal interests of Dancosse nor would the decision adjudicate any interests of his. He therefore had no absolute right to intervene.

He did appear to have an interest in some questions of law common both to his case and the Toro case and he may be said to have had a discretionary right to intervene if the court would grant it. 3B Moore, Federal Practice § 24.07(1). This court did not do so, however, because of the extreme lateness of his application and because of the resulting prejudice to the parties in the Lynch and Toro cases, which were considered at the same time, in the consequential delay which the granting of Dancosse's application would have entailed. The order denying his application was therefore not appealable. Even if it were, the affidavit of poverty is not sufficient in a civil action such as this to warrant granting leave to appeal in forma pauperis. Under the circumstances the Court of Appeals has no jurisdiction over the denial of Dancosse's application to intervene; and appeals have been taken from this three-judge court's judgments in the Lynch and Toro cases on October 22, 1970, dismissing the complaints.

It should also be noted that this court also ruled that the Lynch and Toro cases were not valid class actions and Dancosse, therefore, cannot seek intervention as a member of a class.

The application of Dancosse to proceed in forma pauperis is denied.

Dated at New Haven, Connecticut, this 30th day of November, 1970.

ROBERT P. ANDERSON,
United States Circuit Judge.

WM. H. TIMBERS,
Chief Judge, United States District Court, Connecticut.

ROBERT C. ZAMPANO,
United States District Judge.

Supreme Court of the United States

October Term, 1970

No. 6356

DOROTHY LYNCH ET AL., APPELLANTS,

v.

HOUSEHOLD FINANCE CORPORATION ET AL.

(March 1, 1971)

APPEAL from the United States District Court for the District of Connecticut.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Supreme Court of the United States

October Term, 1970

No. 6356

DOROTHY LYNCH ET AL., APPELLANTS

v.

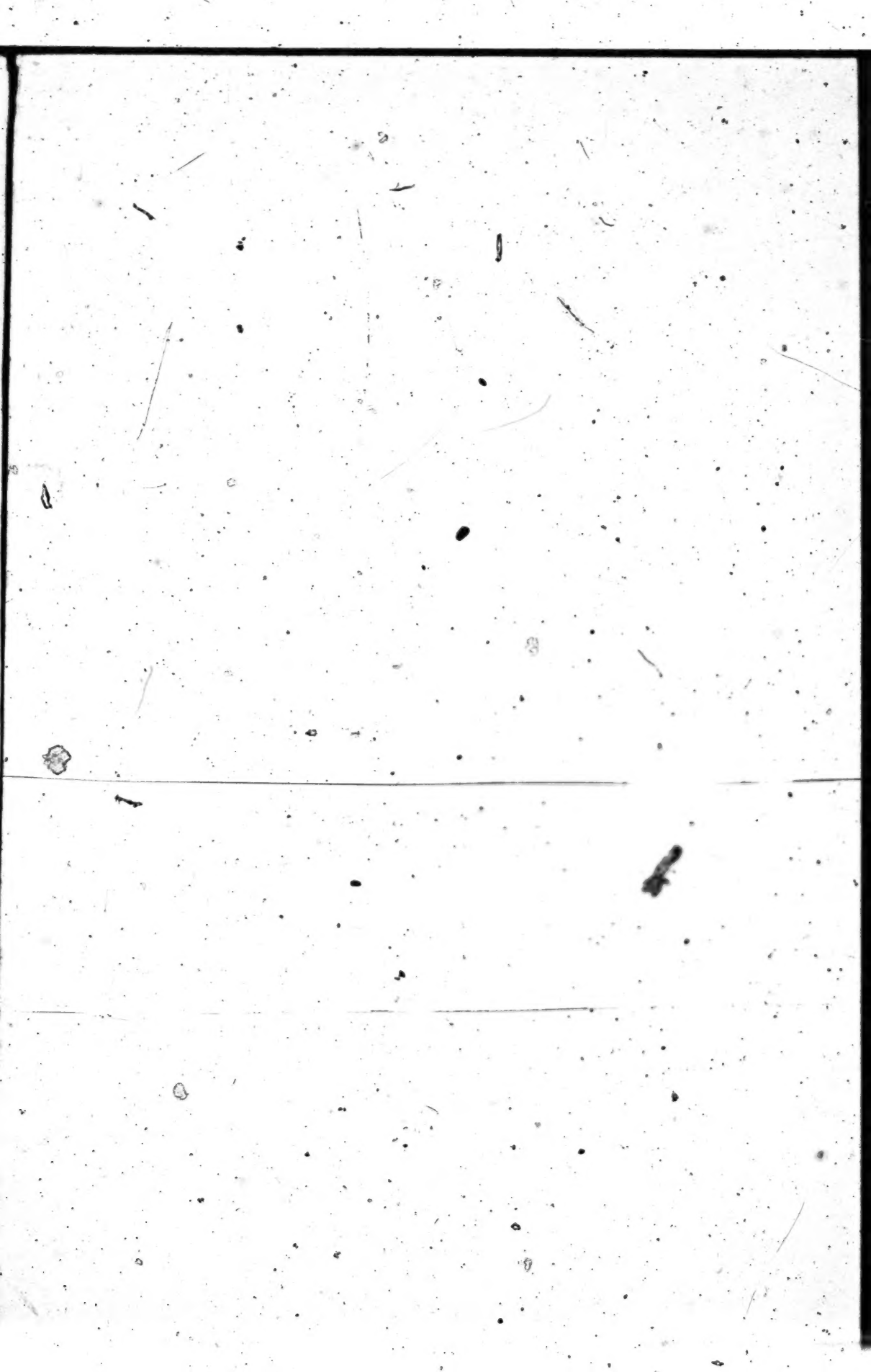
HOUSEHOLD FINANCE CORPORATION ET AL.

(March 1, 1971)

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis;*

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

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In the

Supreme Court of the United States

OCTOBER TERM, 1970

70-5058

No. 6256

DOROTHY LYNCH, ET AL.,
Appellants,

vs.

HOUSEHOLD FINANCE CORP., ET AL.,
Appellees.

On Appeal from the United States District Court
for the District of Connecticut

MOTION TO DISMISS OR AFFIRM

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THE MACK CO., NORTH HAVEN, CONN.

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In the

Supreme Court of the United States

OCTOBER TERM, 1970

No. 6356

DOROTHY LYNCH, ET AL.,
Appellants,

vs.

HOUSEHOLD FINANCE CORP., ET AL.,
Appellees.

On Appeal from the United States District Court for the District of Connecticut

MOTION TO DISMISS OR AFFIRM

Household Finance Corporation, David W. Goldman and Jack Friedler, appellees in the above appeal, respectfully move this Court to dismiss this appeal summarily, or, in the alternative, to affirm summarily the judgment below because the questions on which the decision in this case depends are so unsubstantial as to require no further argument.

PRELIMINARY STATEMENT

Appellants' jurisdictional statement concludes by requesting this Court to reverse the judgment below in this case and its companion (*Toro* vs. *Camposano*) summarily. Appellees also believe the Court should dispose of these cases summarily, although not as appellants wish. For that reason they submit this motion to dismiss or affirm.

Appellants' jurisdictional statement obscures in large part two basic elements of the district court's decision below. The first element concerns the nature of the deprivations alleged in appellants' respective complaints. The district court found that the crux of the alleged deprivations was interference with appellants' access to their respective checking and savings accounts. (Appendix, A-7). This, said the Court, is so close to an interference with the simple ownership of money as to be virtually indistinguishable. *Ibid.* The Court also rejected appellants' claim that, because of their peculiarly impoverished condition, interference with appellants' right to own or use their money was not merely an infringement of property, but a deprivation of a fundamental personal liberty. (Appendix, A-7-A-8)

The second element of the decision below which appellants obscure is the district court's holding that no class action existed. Appellants' jurisdictional statement rests in large part upon the supposition that the district court never decided this question. (Jurisdictional Statement, pp. 8 n.5, 28-30) That supposition is wrong. The district court specifically ruled that, given the peculiar nature of appellants' claims of deprivation, no suitable class could be properly defined. (Appendix, A-8).

ARGUMENT

THE TWO QUESTIONS RAISED BY THIS APPEAL MERIT ONLY SUMMARY CONSIDERATION.

The district court specifically held that the two cases involved in this appeal should be dismissed because the respective complaints alleged only mere property right infringements and failed to allege the requisite "deprivation of personal rights in the sense of 'personal liberty, not dependant for its existence upon the infringement of property rights.' *Hague* vs. *C.I.O.*, 307 U.S. 496, 531 (1939); *Eisen* vs. *Eastman, supra* at 564." (Appendix, A-7) The district court also ruled in the alternative that the Anti-Injunction Statute, 28 U.S.C. § 2283, required dismissal because the judicial relief appellants sought would constitute substantial interference with pending state court proceedings. (Appendix, A-9)

Appellants attack this alternate holding and profess to find it incomprehensible. (Jurisdictional Statement, pp. 26-30) They suggest several elements of the relief they requested which, they say, would in no way violate Section 2283. And they argue that, even if Section 2283 did apply, the district court incorrectly ruled on the question as a "threshold issue". But the error in appellants' arguments on this point becomes apparent if one simply reviews the allegations of appellants' complaints and the items of injunctive relief requested, keeping in mind the district court found as a preliminary matter that the instant cases were not proper class actions. Consequently, the only injunctive relief which the district court could properly consider related to the individual, named appellants and to the specific state court proceedings in the context of which they claimed to be aggrieved.

More important, what is critical for purposes of this motion is not whether the district court correctly decided the Section 2283 issue, but whether this Court should give the district court's ruling plenary consideration. Appellees readily concede that whether Section 1983 is an express exception to Section 2283 is a substantial federal question. But, in fact, this Court is presently considering the issue in three cases which were first argued early last year and then reargued on November 16, 1970.[1] In view of the exhaustive scrutiny this issue is presently receiving, requiring further argument in the context of the instant cases would be redundant. Moreover, because the district court only considered the Anti-Injunction Statute in an alternate holding, disposition of that issue will not resolve the instant appeal. All these reasons argue against plenary consideration of the district court's ruling on Section 2283.

Nor does the question of Civil Rights Act jurisdiction require more than summary disposition. The district court dismissed appellants' actions because they alleged only property right infringements; under *Eisen* vs. *Eastman*, 421 F.2d 560 (2 Cir. 1968), therefore, no jurisdiction existed under 28 U.S.C. § 1343(3). (Appendix, A-6-A-8)

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[1] The three cases are *Younger* vs. *Harris*, 281 F. Supp. 507 (C.D. Cal. 1968), prob. juris. noted, 393 U.S. 1013 (1969); *Samuels* vs. *Mackell*, 288 F. Supp. 348 (S.D.N.Y. 1968), prob. juris. noted, 393 U.S. 975 (1968); and *Fernandez* vs. *Mackell*, 288 F. Supp. 348 (S.D.N.Y. 1968), prob. juris. noted, 393 U.S. 975 (1968). The cases were first argued on April 29, 1970. See 38 U.S.L.W. 3429-30 (U.S. May 5, 1970).

Appellants attack the district court's reliance upon *Eisen* in two ways. First, they argue that the Court of Appeals for the Second Circuit decided *Eisen* incorrectly to begin with. Second, they claim that, even if the property right exception to Section 1343(3) asserted in *Eisen* is valid, the district court wrongly applied it in the instant cases.

But both of these contentions are so unsubstantial as to require no further argument. In the first place, *Eisen* vs. *Eastman* marked no new departure from precedent. It simply affirmed the Second Circuit's obligation to observe Mr. Justice Stone's formulation in *Hague* vs. *C.I.O., supra,* when considering jurisdiction in Civil Rights Act cases. 421 F.2d at 566. See, e.g. *McCall* vs. *Shapiro,* 416 F.2d 246 (2 Cir. 1969); *Bradford Audio Corp.* vs. *Pious,* 392 F.2d 67 (2 Cir. 1968).

Other courts, too, have observed the distinction drawn by Mr. Justice Stone between cases involving deprivations of personal liberty and those involving mere infringements of property. See, e.g., *McNanigal* vs. *Simon,* 382 F.2d 408 (7 Cir. 1967) *cert. denied,* 390 U.S. 962 (1968); *Howard* vs. *Higgins,* 379 F.2d 227 (10 Cir. 1967); *Kochhar* vs. *Auburn Uni.,* 304 F. Supp. 565 (M.D. Ala. 1969). A few courts have specifically relied upon *Eisen* vs. *Eastman. National Land & Investment Co.* vs. *Spector,* 428 F.2d 91, 99 (3 Cir. 1970); *Hingle* vs. *Perez,* — F. Supp. —, 38 U.S.L.W. 2564 (E.D. La. 1970). Most important, this Court has affirmed, *per curiam,* three-judge court dismissals of civil rights actions involving only property right infringements. *Hornbeak* vs. *Hamm,* 393 U.S. 9 (1968), affirming 283 F. Supp. 549 (M.D. Ala. 1968); *Abernathy* vs. *Carpenter,* 373 U.S. 241 (1963), affirming 208 F. Supp. 793 (W.D. Mo. 1962). In both these cases the three-judge courts had relied on Mr. Justice Stone's

formulation to dismiss the actions as involving at most mere property rights and being, therefore, beyond the scope of Section 1343(3). 283 F. Supp. at 554; 208 F. Supp. at 795. Furthermore, as Judge Friendly pointed out in *Eisen* vs. *Eastman*, this Court's decisions in *Holt* vs. *Indiana Mfg. Co.*, 176 U.S. 68 (1900), *Pleasant* vs. *Greenhow*, 114 U.S. 323 (1885), and *Carter* vs. *Greenhow*, 114 U.S. 317 (1885); remain good law, and their holdings must be respected. 421 F.2d at 566.

There are a few cases reported which question or apparently ignore the property right exclusion of Section 1343(3). See, e.g. *Hall* vs. *Garson*, 430 F.2d 430 (5 Cir. 1970); *Hornsby* vs. *Allen*, 326 F.2d 605 (5 Cir. 1964). But only one court has expressly ruled that "the right of an individual or a corporation not to be deprived of property without due process is a 'right . . . secured by the Constitution' within the meaning of § 1343." *Joe Louis Milk Co* vs. *Hershey*, 243 F. Supp. 351, 354 (N.D. Ill. 1965). That decision has since been disapproved. *Ream* vs. *Handley*, 359 F.2d 728, 731 (7 Cir. 1966).

Consequently, the continued viability of the property right exclusion can hardly be questioned. It has persisted, despite criticism, Note, *The Proper Scope of The Civil Rights Acts*, 66 Harv. L. Rev. 1285, 1288-91 (1953), not merely because of the force of precedent, but because the distinction between property right infringements and deprivations of invaluable personal liberties serves a fundamental federal policy:

> "[T]here seems to be something essentially right about [Mr. Justice Stone's construction], especially if one accepts, as we do, his premise that the overlap between 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3) should be explained in some rational way. It has the merit of preserving not only the kind of case that was at the core

> of congressional concern in 1871 but a good many others that Congress would probably desire to have within the statute, while at the same time excluding cases that neither the Reconstruction Congress nor late Congresses could really have had in mind."

Eisen vs. *Eastman, supra,* 421 F.2d at 565-66. See *National Land & Investment Co.* vs. *Spector, supra,* 428 F.2d at 98-100.

Furthermore, this Court should not be misled by appellants' contention that the district court's decision deprives them of an opportunity to assert their constitutional claim. (Jurisdictional Statement, pp. 9-12) Like the defendants in *Sniadach* vs. *Family Finance Corp.*, 395 U.S. 337 (1969), appellants can raise this claim in connection with the pending state court proceedings commenced with garnishment of their accounts.[2] Indeed, an attorney associated with appellants' counsel has already raised the constitutional issue in the Connecticut courts in just such a fashion. *Michael's Jewelers* vs. *Handy,* 6 Conn. Cir. 103, 266 A.2d 904 (1969). Any hardship resulting from the claimed unavailability of state declaratory judgment relief, (Jurisdictional Statement, pp. 10, 11 n. 11), should be resolved by deciding the questions raised in *Boddie* vs. *Connecticut,* 286 F. Supp. 968 (D. Conn. 1968), prob. juris. noted, 395 U.S. 974 (1969). Certainly, noting probable jurisdiction in the instant appeal is not going to resolve whether

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[2] The constitutional issue decided by this Court in *Sniadach* vs. *Family Credit Corp., supra,* was raised in the context of the state court action commenced against Christine Sniadach by way of an order to show cause why the garnishment should not be discharged. *Family Finance Corp.* vs. *Sniadach,* 154 N.W.2d 259, 261 (1967).

Connecticut should make its courts available without fee to impoverished litigants.

However, even assuming that *Eisen* vs. *Eastman* is good law, appellants contend the district court erred by treating the instant cases as involving only deprivations of mere property. (Jurisdictional Statement, pp. 14-17) There is no real doubt that "the Civil Rights Act was not designed to support a cause of action, the 'gist' of which is damage or injury to property." *National Land & Investment Co.* vs. *Spector, supra,* 428 F.2d at 99. But appellants seek plenary consideration, or even summary reversal, by this Court on the issue whether the district court correctly applied the *Eisen* rule to the garnishment of appellants' checking or savings accounts.

This claim hardly raises a substantial federal question. See *Bradford Audio Corp.* vs. *Pious, supra,* 392 F.2d at 72. That appellants allege they are indigent and assert the garnishments involved here have deprived them of subsistance and, consequently, the capacity to enjoy invaluable personal rights is a sophistry. Accepting appellants' approach would mean "any plaintiff could claim that money taken under color of state law is marginal to his capacity to maintain the barest minimum in food, shelter, health care or personal credit rating, thereby negating *Eisen.*" (Opinion of the District Court, Appendix, A-8)

Furthermore, the garnishment of appellants' deposits in checking or savings accounts hardly constitutes the objectionable kind of interference with the specialized kinds of personal necessaries involved in the landlord lien cases. Compare Opinion of the District Court, Appendix, A-7, with *Hall* vs. *Garson, supra; Santiago* vs. *McElroy,* — F. Supp. —, 39 U.S.L.W. 2266 (E.D. Pa. 1970); *Swarb* vs. *Lennox,* 314 F.

Supp. 1091 (E.D. Pa. 1970) appeal filed, 39 U.S.L.W. 3100 (No. 538, 1970); *Laprease* vs. *Raymours Furniture Co.*, — F. Supp. —, 39 U.S.L.W. 2082 (N.D.N.Y. 1970); *Klim* vs. *Jones*, 315 F. Supp. 109 (N.D. Cal. 1970). Incidentally, neither the above cited cases nor *Moya* vs. *DeBaca*, 286 F. Supp. 606 (D.N.M. 1968), appeal dismissed, 395 U.S. 825 (1969), support the proposition for which appellants cite them.[3]

---

[3] In their jurisdictional statement at page 9 appellants state, "the district court's dismissal (of the two cases in this appeal) conflicts with every decision of every Federal Court which has considered similar complaints."

This is simply untrue. The district court dismissed appellants' complaints because they alleged only a property right infringement — interference with appellants' ownership of money — and, therefore, failed to state a claim justiciable under Section 1343(3). In several of the cases appellants claim are indistinguishable the deciding courts expressly noted the peculiar kinds of personal property involved. *Santiago* vs. *McElroy*, *supra*; *Laprease* vs. *Raymours Furniture Co.*, *supra*; *Klim* vs. *Jones*, *supra* at 115. Furthermore, jurisdiction existed under 28 U.S.C. § 1331 in *Swarb* vs. *Lennox*, *supra* at 1096, and in *Klim* vs. *Jones*, *supra* at 115. The courts took jurisdiction in *Hall* vs. *Garson* and *Laprease* vs. *Raymours Furniture Co.*, not on the property infringement claims, but on the Fourth Amendment claims. 430 F.2d at 438; 39 U.S.L.W. at 2082. In *Hall* vs. *Garson*, the Court specifically disclaimed any intent to rule on the existence or scope of the property right except in Section 1343(3). 430 F.2d at 439 n. 19. Finally, although *Moya* vs. *DeBaca* is silent on the question of jurisdiction, a dissenting opinion indicates that the conduct complained of involved threats of repeated wage garnishments so as to deprive the plaintiff of his employment. 286 F. Supp. at 610. Compare *Eisen* vs. *Eastman*, *supra*, 421 F.2d at 565.

Finally, appellants' reliance upon the holdings in various welfare rights cases is improper. Unquestionably, deprivations of certain public housing or welfare benefits do constitute infringements of invaluable personal rights and are justiciable under Section 1343(3). See, e.g., *Rosado* vs. *Wyman*, 397 U.S. 397 (1970); *Goldberg* vs. *Kelly*, 397 U.S. 254 (1970); *Thorpe* vs. *Housing Authority*, 393 U.S. 268 (1969); *King* vs. *Smith*, 392 U.S. 309 (1968). But this elevation of critical welfare rights and public housing tenancies to the level of "personal liberty," *Hague* vs. *C.I.O.*, *supra*, does not give the district court Section 1343(3) jurisdiction over the garnishment of appellants' checking or savings accounts simply because appellants allege, in effect, that "they really need the money."

In the first place, there are generic differences between appellants' interest in their privately accumulated funds and a recipient's interest in welfare or public housing: Welfare and public housing benefits are dispensed from the public purse with the specific legislative intent that all who meet the statutory eligibility requirements should enjoy a certain minimal level of subsistence or housing. *Rothstein* vs. *Wyman*, 303 F. Supp. 339, 346-47 (S.D.N.Y. 1969), vacated, 398 U.S. 275 (1970). See *Goldberg* vs. *Kelly*, *supra*, at 264-65. In the second place, not every interest of even welfare recipients is accorded "personal liberty" status. *McClellan* vs. *Shapiro*, 315 F. Supp. 484, 487 (D. Conn. 1970).

But most important, there are important policy reasons why this Court should reject appellants' invitation to make every person's property interests matters of invaluable personal liberties simply upon the allegation of subjective individual need. Use of such a device to by-pass *Eisen* and to avoid the property interest exception to Section 1343(3) would effectively

eliminate the $10,000 jurisdictional requirement of Section 1331 in all cases involving state action except for those who are so affluent as to be relatively unaffected by the outcome of any case involving less than $10,000. Such a development would constitute reverse discrimination. More important, it would necessitate prefacing each federal question case with less than $10,000 at stake by a factual hearing designed to determine whether or not the plaintiff's claimed economic status was sufficiently inadequate so as to justify taking Section 1343(3) jurisdiction under the financial need exception to the property interest exclusion. Unlike the welfare and public housing cases, in which the claimant's eligibility is easily, if not already determined, claims that property interests should be treated as "personal liberty" within the context of Section 1343(3) because of each plaintiff's particular financial condition will require case by case adjudications before jurisdiction can even be established. This Court should carefully and skeptically scrutinize such a novel interpretation of the Section 1343(3) property interest exclusion, especially in view of the increasingly heavy burden already imposed on the courts by civil rights litigation, see, *Eisen* vs. *Eastman*, *supra*, 421 F.2d at 561 n.1.

CONCLUSION

This Court should summarily dismiss the instant appeal or, in the alternative, affirm summarily the judgment of the district court.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~6356~~ 70-5058

NORMA TORO, on behalf of herself and all other persons similarly situated,

Appellant,

v.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, Commissioner of the Superior Court of the State of Connecticut; CHARLES H. BARRETT, Deputy Sheriff of New Haven County, individually and as representative of all Sheriffs, Deputy Sheriffs and Constables of the State of Connecticut; and THE HAMDEN NATIONAL BANK,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

MOTION TO AFFIRM JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

For Appellee,
Charles H. Barrett,
Deputy Sheriff

ROBERT K. KILLIAN,
Attorney General

RAYMOND J. CANNON,
Assistant Attorney General.

MOTION TO AFFIRM

The appellee in this case moves to affirm the Judgment of the United States District Court for the District of Connecticut on the ground that it is manifest that the questions on which the decision depends are so unsubstantial as not to need further argument.

Dated January 27, 1971.

Respectfully submitted,

Appellee,
Charles H. Barrett,
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By: ROBERT K. KILLIAN,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 6356

NORMA TORO, on behalf of herself and all other persons similarly situated,

Appellant,

v.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, Commissioner of the Superior Court of the State of Connecticut; CHARLES H. BARRETT, Deputy Sheriff of New Haven County, individually and as representative of all Sheriffs, Deputy Sheriffs and Constables of the State of Connecticut; and THE HAMDEN NATIONAL BANK,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF OF APPELLEE RE MOTION TO AFFIRM

For Appellee,
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JURISDICTION

The present action is brought under the Civil Rights Acts, 42 U. S. C. § 1983 and 28 U. S. C . § 1343. The appellee claims that the judgment dismissing this action should be affirmed because the complaint is fatally deficient on the following grounds:

1. The right asserted is not one of personal liberty but one of property, and thus falls outside of the scope of § 1343.

2. The complaint seeks to stay a pending state court proceeding, namely, the garnishment of a bank account pursuant to a writ issued by a Commissioner of the Superior Court.

STATEMENT OF THE CASE

In Connecticut garnishment process is served on garnishee and defendant by a sheriff pursuant to directions contained in the writ of summons issued by the plaintiff's attorney as Commissioner of the Superior Court. *See* Conn. Gen. Stat. (Rev. to 1968, Supp. 1969) §§ 52-89, 52-329, 52-337. Security for subsequent judgment is thus provided. Various property, however, is exempt from garnishment, including household furniture and articles of a debtor's trade. Conn. Gen. Stat. (Rev. to 1968) §§ 52-329, 52-352. As early as 1937, wage garnishment prior to judgment was abolished. Conn. Gen. Stat. (Rev. to 1968, Supp. 1969), § 52-361. Even as to post-garnishment of wages, strict limitations were enacted in a 1969 amendment. *See id.*

Any defendant whose property has been garnisheed may apply to a judge to cite the plaintiff to appear and state under oath the amount of the claim and whether he truly believes it to be just. The judge may require a bill of particulars to be furnished by the plaintiffs. Conn. Gen. Stat. (Rev. to

1968), § 52-301. Excessive attachments may be ordered to be discharged. Conn. Gen. Stat. (Rev. to 1968), § 52-302. Wrongful or unauthorized attachment, moreover, is subject to an action for abuse of process or conversion. *See Csakany* v. *Takacs*, 143 Conn. 485, 487, 123 A. 2d 764 (1956); *Flaxman* v. *Capitol City Press, Inc.*, 121 Conn. 423, 429, 185 Atl. 417 (1936).

The indigency of Mrs. Toro, appellant, is not established by either the complaint or supporting affidavits. It is claimed in the jurisdictional statement that she earns $85.00 weekly with "a small supplemental grant" from Connecticut's AFDC Program. (p. 6). Appellant sheds no light on the amount of that welfare grant. As a matter of fact in an affidavit, Doc. 17, it is stated that she had been employed for the past two years. (¶5). She further stated that she had been trained for a supervisory position with her present employer, Gant Shirtmakers of New Haven, Conn. (¶¶6, 7), and alleged:

> "Because her employment has worked out so well, she believes that it should not be long before she is able to become completely self-sustaining and no longer be dependent on aid from State Welfare." (¶9).

We further note that there is a serious question as to whether the appellant is eligible for welfare in the first place even on her $85.00 salary. The maximum earned income for welfare recipients is $266.67 per month for a family of two. Conn. Gen. Stat. (Rev. to 1968, Supp. 1969) § 17-2. According to Mrs. Toro's allegations, she earns about $340.00 per month. See also her affidavit in Doc. 4, ¶2. This greatly exceeds the $250.00 aid limitation for large families of the State of Maryland which this Court sustained in *Dandridge* v. *Williams et al.* (No. 131 October Term, 1969).

Mrs. Toro opened her checking account in October, 1969, and in the three to four months before it was garnisheed ac-

cumulated over one hundred dollars in the account. (Complaint, §§ 9, 15).

It is interesting that no mention whatsoever of income or aid is made in the forma pauperis affidavit before this Court.

In her Jurisdictional Statement, appellant claims that she and her landlord had agreed to terminate the lease without liability to the tenant. However, in the appellant's affidavit of March 16, 1970, she stated that she had "stopped payment" on her January rent payment and allowed her landlord to keep her security deposit in the amount of one month's rent for her occupancy of the premises during January, 1970. (§ 12). This also indicates that Mrs. Toro's dishonored checks can not be blamed solely on the garnishment of her checking account as she claims.

In summary, the record indicates that Mrs. Toro's current earning power was not affected in any way whatsoever by the garnishment. The assumption that the garnisheed funds were necessary for "subsistence" is totally unsupported in the record and offers of proof.

NO SUBSTANTIAL FEDERAL QUESTION PRESENTED.

A. Essentially only a property right is involved.

The basis for the dismissal of the complaint is more than adequately set forth in the Memorandum of the Three-Judge Court. Basically, the Court held that uninterrupted use of a bank account concerned almost entirely the use of money. The right asserted in substance did not involve personal liberty but only that of property. The complaint thus fell outside the scope of 28 U. S. C. § 1343 (3). The jurisdictional amount required by 28 U. S. C. §1331 (a) was not alleged to have been met.

Where only property rights are involved, § 1331 (a) would be rendered virtually meaningless if its requisite jurisdictional amount could be evaded by coloring the complaint as a Civil Rights one with purported jurisdiction under § 1343. This apparent jurisdictional conflict was resolved by Mr. Justice Stone, concurring in *Hague* v. *Committee for Industrial Organization*, 307 U.S. 496 at 518 ff. (1939), as follows: Civil Rights jurisdiction would lie only where the right involved was "one of personal liberty, not dependent for its existence upon the infringement of property rights. . . ." 307 U.S. at 531. The right asserted had to be inherently incapable of pecuniary valuation to come under § 1343.

This opinion was recently followed in *Eisen* v. *Eastman*, 421 F. 2d 560 (2d Cir. 1969), involving a landlord's challenge to rent control. The Court stated that notwithstanding certain arguments against Justice Stone's analysis,

> "There seems to be something right about it, especially if one accepts, as we do, his premise that the overlap between 28 U. S. C. § 1331 and 28 U. S. C. § 1343 (3) should be explained in some rational way."
> 421 F. 2d at 565.

Applying these principles to our situation, we note that a deposit in an ordinary commercial bank creates the relationship of debtor and creditor between the bank and the depositor. *State* v. *Vars*, 154 Conn. 255, 262, 244 A. 2d 754 (1966). When a checking account is garnisheed it is only the defendant's interest as a bank creditor which is affected. Current earning power of the defendant remains wholly unimpaired, unlike the situation in *Sniadach*, 395 U.S. 337 (1969). Accordingly, there is no authority for jurisdiction under cases such as *King* v. *Smith*, 392 U.S. 309, 334 (1968) ("destitute children . . . flatly denied assistance" with attending social ills).

See also McCall v. *Shapiro*, 416 F. 2d 246 (2d. Cir. 1969); *Weddle* v. *Director*, 39 U.S. L. W. 2370 (4th Cir. 1970); *Johnson* v. *Harder*, 318 F. Supp. 1274 (D. Conn. 1970); *Campagnolo* v. *Harder*, Civ. No. 13, 968 (D. Conn. 1970), appendix F; *Hingle* v. *Perez*, 312 F. Supp. 127 (E.D. La. 1970).

The jurisdictional statement contains a mass of citations (pp. 9, 15 and 16) which involve situations very different from this one. *Santiago* concerned a landlord's sale of distrained household furnishings of the tenant, exempt in Connecticut. *Swarb* concerned confession judgments and relief was denied in that case. *Moya* involved post-judgment wage garnishment and there also relief was denied. *Gold* concerned the liberty to pursue one's calling. *Taylor* concerned the right to public employment. These are fully in line with *Eisen*.

Appellant claims that she lacks a state forum in which to bring her suit because of court costs. However, there are no court costs involved in raising the unconstitutionality of garnishment as a defense. Appellant also cites *Michael's Jewelers* (266 A. 2d 904) supposedly to show that Connecticut courts will not listen to constitutional claims. That case specifically dealt in detail with the due process claim. We further note that counsel for the defendant in *Michael's Jewelers* was employed by the same legal services program which has brought the present suit. The records of the Circuit Court indicate that no petition for certification to the Connecticut Supreme Court or for that matter certiorari to the U.S. Supreme Court was ever sought in that case.

It is recognized that the analysis in *Hague* and *Eisen* is not one of mathematical nicety. Few rules are. But it does furnish a meaningful and understandable test in determining which rights truly merit Civil Rights jurisdiction. In a time when the federal courts are being inundated with claims col-

ored under the color of law statutes, the sound principles set forth by the three-judge district court should be affirmed without need for further argument. The federal courts are now delineating the limits of the personal liberty-property right distinction. Clear guidelines in this respect are provided by the court below and should be affirmed without need for further discussion.

B. Anti-injunction Act also bars relief.

Title 28 U. S. C. § 2283 provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

This provision reflects fundamental principles of federalism. *Atlantic Coast Line Railroad Co.* v. *Brotherhood of Locomotive Engineers* (No. 477, October Term, 1969). Accordingly, the term "proceedings" is a broad one.

> "It includes all steps taken or which may be taken in the state courts or by its officers from the institution to the close of the final process. . . . . It applies alike to action by the court and by its ministerial officers. . . ."
>
> *Hill* v. *Martin*, 296 U.S. 393, 403 (1935).

Thus pre-judgment garnishment has been recognized as a proceeding within the meaning of § 2283. *N. L. R. B.* v. *Underwood Mach. Co.*, 198 F. 2d 93 (1st Cir. 1952). So has a pre-judgment labor and material lien. *Javelin Oil Company* v. *T. C. Morrow Drilling Company*, 266 F. Supp. 119 (E. D. La. 1967). In Connecticut by virtue of proper garnishment the court acquires control and dominion over the property involved, which thus comes within its jurisdiction. *Gimbel* v. *Gimbel*, 147 Conn. 561, 565, 163 A. 2d 451 (1960).

OTHER REASONS WHY THIS CASE DESERVES NO FURTHER ARGUMENT.

The offers of proof are totally obscure as to indigency, a point on which important constitutional questions may turn. In addition, the case is for all intents and purposes a moot one, because the garnishment has been released. Appendix, p. A-4, n.1. If there is to be any further garnishment here a court order will be required. Conn. Gen. Stat. (Rev. to 1968), § 52-281. Furthermore, it is quite possible that the state suit will be disposed of well before this case can be decided by this Court. As to future cases, the decision of the three-judge court still leaves an adequate forum to raise the questions involved. That forum is the courts of Connecticut. As courts of competent jurisdiction they are presumed to be capable of providing a full and fair hearing. Constitution of the United States, Article X.

There is no point in inflating the federal dockets with suits like these. In 1968, 179 three-judge courts were convened. Last year the number was 291. *New York Times*, January 20, 1971, page 13, col. 6. Petition for certiorari to the State Supreme Court was the procedure followed in *Sniadach*. It should be followed here.

Respectfully submitted,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~6356~~ 70-5058

DOROTHY LYNCH, et al.,

Appellants,

v.

HOUSEHOLD FINANCE CORPORATION, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 6356

DOROTHY LYNCH, et al.,

Appellants,

v.

HOUSEHOLD FINANCE CORPORATION, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR APPELLANTS

Appellants appeal from the judgment of the United States District Court for the District of Connecticut, entered on October 22, 1970, dismissing their complaints without an evidentiary hearing, upon the appellees' motions to dismiss.

OPINION BELOW

The opinion of the District Court for the District of Connecticut (App. 20-27) is reported at 318 F.Supp. 1111.

JURISDICTION

This suit was brought under 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983, for a permanent injunction and a declaratory judgment that Connecticut attachment and garnishment statutes were unconstitutional in light of *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969). A three-judge district court was convened on March 9, 1970, pursuant to 28 U.S.C. §§ 2281 and 2284. The judgment of the district court was entered on October 22, 1970, and notices of appeal were filed in that court on November 19, 1970. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1253 and Section 2101(b). *American Federation of Labor v. Watson*, 327 U.S. 582, 591-593 (1946); *Baker v. Carr*, 369 U.S. 186 (1962); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *Damico v. California*, 389 U.S. 416 (1967).

QUESTIONS PRESENTED

1. Where wage-earners alleged that they had been deprived, under color of state law, of property necessary for subsistence without procedural due process or equal protection, did the district court err in refusing jurisdiction pursuant to 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983?

2. Where wage-earners sought declaratory and injunctive relief, on behalf of themselves and others similarly situated, against garnishments levied summarily and without judicial authorization or review, and where wage-earners had no redress in the state courts, did the district court err in holding, as a threshold issue, that 28 U.S.C. § 2283 barred the award of any relief?

STATUTES INVOLVED

Title 28, United States Code, § 1343(3) provides:

Civil Rights and Elective Franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

Title 28, United States Code, § 2283 provides:

Stay of State Court Proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Title 42, United States Code, § 1983 provides:

Civil Action for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Title 52, Connecticut General Statutes, § 329 provides:

Process of Foreign Attachment

When the effects of the defendant in any civil action in which a judgment or decree for the payment of money may be rendered are concealed in the hands of his agent or trustee so that they cannot be found or attached, or when a debt is due from any person to such defendant, or when any debt,

legacy or distributive share is or may become due to such defendant from the estate of any deceased person or insolvent debtor, the plaintiff may insert in his writ a direction to the officer to leave a true and attested copy thereof and of the accompanying complaint, at least twelve days in the case of the superior court or the court of common pleas, or six days in the case of the circuit court, before the session of the court to which it is returnable, with such agent, trustee or debtor of the defendant, or, as the case may be, with the executor, administrator or trustee of such estate, or at the usual place of abode of such garnishee; and from the time of leaving such copy all the effects of the defendant in the hands of any such garnishee, and any debt due from any such garnishee to the defendant, and any debt, legacy or distributive share, due or that may become due to him from such executor, administrator or trustee in insolvency, not exempt from execution, shall be secured in the hands of such garnishee to pay such judgment as the plaintiff may recover.

STATEMENT OF THE CASE

These actions challenged the constitutionality of Connecticut statutes authorizing Connecticut deputy sheriffs, at the direction of attorneys for alleged creditors, summarily to garnish wages deposited by Connecticut residents in their checking accounts and credit union accounts (App. 5-6, 33-34).[1] Wage-earners regularly use the deposited funds to meet recurrent and emergency expenses for food, clothing, shelter, and medicine (App. 7, 34-35).

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[1] The garnishments are levied pursuant to Conn.Gen.Stat. § 52-329. These actions also challenged the constitutionality of Conn.Gen.Stats. §§ 52-279, 52-280, which authorize deputy sheriffs summarily to attach assets of Connecticut residents at the direction of attorneys for alleged creditors. Since no named plaintiff in this appeal was subjected to an attachment, we shall limit our discussion to prejudgment garnishment.

Deputy sheriffs levy garnishments pursuant to writs issued by creditors' attorneys, prior to institution of state court civil suits for money damages. A deputy sheriff may freeze a wage-earner's account, containing moneys necessary for subsistence, before serving him with process and before the case is docketed in the state court. Garnishment is levied without the order, authorization, or supervision of any court (App. 8-9, 35-37).

Garnishment is levied without prior notice to the alleged debtor, and without any opportunity to be heard by any judicial or quasi-judicial tribunal. As a condition of levying a garnishment, the alleged creditor is not required to post a bond, to demonstrate the existence of a meritorious claim, or to show that the alleged debtor might conceal his property. Since the deputy sheriff must serve process upon the resident debtor, garnishment does not confer jurisdiction upon the state court (App. 8-9, 36-37). No state court hearing, order or action is necessary for the creditor to maintain the garnishment until trial on the merits or settlement of the civil suit (App. 23 n. 2).

The named plaintiffs are low-income wage-earners, residents of Connecticut, whose checking and credit union accounts were garnished pursuant to the above-described practice. The actions below were brought on their behalf and on behalf of other Connecticut residents whose assets are frozen by garnishment, or who are threatened in the future with prejudgment garnishment (App. 6, 34). The named wage-earners sued the class of Connecticut sheriffs, deputy sheriffs and constables, who levy on bank accounts by serving writs of garnishment (App. 6-7, 34). They also sued their garnishees, and alleged creditors and attorneys who had instructed Connecticut deputy sheriffs to garnish wages deposited in their accounts. The wage-earners requested that a three-judge district court declare unconstitutional the Connecticut practice of summary garnishment; and that the court permanently enjoin the levy of prejudgment garnishments, presently and prospectively, in the

absence of notice and hearing. The district court was *not* requested to enjoin the civil actions for money damages which were pending in state court against the wage-earners (App. 6, 10, 34, 37-38).

The named wage-earners proceeded in forma pauperis in the district court (App. 15-16, 43-45). A three-judge court was convened on March 9, 1970 (App. 17). That court dismissed the complaints on October 22, 1970, without an evidentiary hearing (App. 19, 21-22), pursuant to their alleged creditors' motions to dismiss (App. 18, 52). On this appeal, therefore, the wage-earners' allegations stand admitted. *Boddie v. Connecticut*, 39 L.W. 4294 (1971); *Jenkins v. McKeithen*, 395 U.S. 411, 421-22 (1969).

Dorothy Lynch, plaintiff below, is employed by St. Raphael's Hospital in New Haven. Her only income, $69.00 weekly, supports herself and her younger son, and partially supports her older son. In February, 1968, she authorized her employer to withhold ten dollars weekly from her wages for deposit in a credit union account at the hospital. She has used these deposited wages in the past for necessary family needs (App. 7-8).

Household Finance Corporation brought suit on a note against Mrs. Lynch for $525.00 damages in Connecticut's sixth circuit court. By order of the finance company's attorney, deputy sheriff Jack Friedler garnished her account on June 23, 1969, by serving a writ of garnishment on the Hospital of St. Raphael Credit Union. He subsequently served her with process.[2] No notice to Mrs. Lynch or opportunity to be heard preceded the garnishment of her account, which contained $494.83. The garnishment was levied without court order or authorization (App. 8, 11-14).

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[2]Mrs. Lynch was served with process on June 26, 1969, three days after garnishment. Process was docketed with the sixth circuit court on July 1, 1969 [Information appears in original record on file at sixth circuit court, # CV6-41837]. See, *St. Paul Fire and Marine Ins. Co. v. Cunningham*, 257 F.2d 731, 732 (9th Cir. 1958) (judicial notice taken of such records).

As a result of the levy, Mrs. Lynch was unable to pay her rent on time, and the family was nearly evicted. Additionally, she encountered difficulty in maintaining her family on a minimally adequate diet (App. 16).

Mrs. Lynch has suffered these hardships although she has valid defenses to the finance company's suit (Plaintiff's brief, filed March 4, 1970, p. 2). Since she is too poor to afford a surety bond, however, she is unable to arrange for release of the garnishment (*Infra*, p. 46a). The garnishment will thus freeze her assets, without any hearing either prior or subsequent to the levy, until trial on the merits or settlement of the case (App. 9, 23 n. 2).

Norma Toro, plaintiff below, earns $85.00 weekly. This income, with a small supplemental grant from the Connecticut State Welfare Department's AFDC program, supports herself and her son. She receives no assistance from her ex-husband, who is the father of her son and from whom she was divorced two years ago. Mrs. Toro has been employed for six months at a shirt factory in New Haven; during this period she has been promoted to a supervisory position. She believes that she may, in the near future, no longer require assistance from the welfare department (App. 34, 45-46).

In October, 1969, Mrs. Toro opened a checking account with the Hamden National Bank, into which she regularly deposited her weekly wages. This account was used for necessary family expenses (App. 34-35, 46). Eugene Camposano, Mrs. Toro's former landlord, sued her in Connecticut's eighth circuit court for back rent allegedly due, and sought $700.00 damages. Pursuant to instructions of the landlord's attorney, Deputy Sheriff Charles Barrett garnished her checking account on January 30, 1970, by serving a writ of garnishment on the Hamden National Bank; he subsequently served her with process (App. 35-36, 38-42).[3] Mrs.

[3]Mrs. Toro was served with process on January 31, 1970, one day after the garnishment. Process was docketed with the eighth circuit court on February 10, 1970 [Information appears in original record on file with the eighth circuit court, # CV8-9353]. See note 2, *supra*.

Toro was given no notice or opportunity to be heard prior to the garnishment of her account, which contained $103.99. The garnishment was levied without any court order or authorization (App. 35-37).

As a result of the garnishment, four of Mrs. Toro's outstanding checks "bounced," exposing her to the possibility of criminal prosecution and eviction. Her credit and reputation were severely damaged. Two of the "bounced" checks were payable to creditors holding security interests in her personal property. One of these creditors, the American Finance Corporation, had a right not only to repossess her automobile, but also to demand the full amount owed on her note. The Hamden National Bank charged her $10.00 "legal expenses" for the garnishment. Mrs. Toro suffered these consequences although she has valid defenses to Camposano's action (App. 36, 46-47).[4]

On March 24, 1970, Camposano, without state court authorization or order, released the garnishment of Mrs. Toro's account (*Infra*, p. 48a). On August 11, 1970, Maurice Dancosse moved to intervene as a plaintiff in Mrs. Toro's action. He alleged a garnishment of his checking account under circumstances identical to those of Mrs. Toro. As the result of the garnishment, he suffered consequences similar to those experienced by Mrs. Toro (R. Doc. Nos. 27-28). His motion to intervene was denied on August 19, 1970, prior to dismissal of the complaints without an evidentiary hearing. The court based its denial on the ground that the "case has been fully submitted" (App. 32).[5]

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[4]Mrs. Toro and Camposano had agreed to terminate any lease agreement existing between them, without liability to Mrs. Toro. Additionally, the premises which Camposano let to Toro were untenantable and contained numerous housing code violations (App. 47-48). See, *Javins v. First National Realty Co.*, 38 L.W. 2596 (D.C. Cir. 1970), cert. den., 39 L.W. 3224 (1970); *LeClair v. Woodward*, No. CV11-5267 (Conn. Cir. Ct. 1970).

[5]Maurice Dancosse filed, on November 20, 1970, an appeal with the court of appeals for the second circuit from the district court's order denying him leave to intervene (App. D, Juris. Statement). The

On October 22, 1970, the three-judge court dismissed the complaints without an evidentiary hearing, pursuant to the alleged creditors' motions to dismiss, on the grounds that it lacked jurisdiction under 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983; and that the award of any relief was barred by the anti-injunction statute, 28 U.S.C. § 2283 (App. 21). This brief demonstrates that the dismissal of the complaints was plainly erroneous.

SUMMARY OF ARGUMENT

Despite the district court's acknowledgement that the wage-earners' constitutional claims were substantial, *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), it dismissed the complaints without an evidentiary hearing. Settled law of the Connecticut Supreme Court similarly denies wage-earners a forum to contest the propriety of garnishments levied on their scarce assets. Without showing any special circumstances, a self-proclaimed creditor may garnish his debtor's property and maintain the garnishment until final disposition of his suit. From the date of levy until trial on the merits or settlement of the case, a garnishment is effective without any order, hearing, action, or participation by the state court. *Sachs v. Nussenbaum*, 92 Conn. 682, 688-89, 104 A. 393, 395 (1918).

Unless this Court reverses the district court's dismissal, Connecticut wage-earners will continue to be deprived of any forum for litigating and vindicating the constitutional rights which this Court established for them in *Sniadach*.

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district court denied his application for leave to appeal in forma pauperis on November 30, 1970 (App. 53-54). Dancosse also filed a notice of appeal with this Court (App. 32).

The court's opinion dismissing the actions suggested, although it did not so hold, that release of the garnishment by Mrs. Toro's former landlord might moot her action (App. 22 n.1), which was brought as a class action (App. 34). The court, however, failed to consider her request for declaratory and injunctive relief from future garnishments with which she was threatened. See *infra*, pp. 39-40.

Lacking judicial review, they may be forced by the imperatives of survival to abandon their defenses and settle claims which have no validity. If they choose to exercise their right to a day in court, they must forego the use of property which is necessary for subsistence. Compare, *Boddie v. Connecticut, supra.*

The district court's dismissal, on the ground that 28 U.S.C. § 1343(3) does not grant jurisdiction to redress deprivations of property in violation of the Fourteenth Amendment, was erroneous. Summary garnishments arbitrarily deprive wage-earners of rights deemed fundamental by the first Reconstruction Congress. Civil Rights Act of 1866, 14 Stat. 27. Prejudgment garnishments levied by Connecticut deputy sheriffs, acting pursuant to instructions of creditors' attorneys, impair wage-earners' ability to subsist, to contract, to control and dispose of their property, and to defend their interests in court. See, *Jones v. Mayer Co.*, 392 U.S. 409 (1968). The protection of these rights from unconstitutional state action was assured by passage of the Fourteenth Amendment. *Railroad Tax Cases*, 13 F. 722 (C.C. Cal. 1882). 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983 guarantee redress for their unconstitutional deprivation in a federal forum. 17 Stat. 13 (1871). Where no state forum exists to safeguard these rights, the responsibility of the federal courts to accept jurisdiction is compelling. *Monroe v. Pape*, 365 U.S. 167 (1961).

The jurisdiction granted by § 1343(3) was not repealed by passage of 28 U.S.C. § 1331 in 1875. 18 Stat. 470. The "revolutionary" expansion of federal jurisdiction wrought by the Act of 1875 belies any such notion. Frankfurter and Landis, *The Business of the Supreme Court* 65 (1928). Absent an unmistakable intention by Congress to the contrary, the Acts of Reconstruction—including §§ 1983 and 1343(3)—apply today with their original force. *United States v. Price*, 383 U.S. 787 (1966); *Jones v. Mayer Co., supra.* The plain meaning of §§ 1983 and 1343(3), buttressed by their history, reflects Congress' deep concern for

maintaining federal vigilance over unconstitutional deprivations, by persons acting under color of state law, of life, liberty and property. *Monroe v. Pape, supra.* Not the faintest glimmer appears of a Congressional intention to relax this vigilance by passage of 28 U.S.C. § 1331 in 1875.

The rationale of the district court's dismissal, that § 1343 (3) provides jurisdiction to redress unconstitutional deprivations of "personal liberty" but not of "property," produces profound uncertainties in the delineation of federal jurisdiction to protect constitutional rights. Decisions pursuant to the "personal liberty-property rights" formula are conflicting and unpredictable. The formula is therefore unacceptable for defining the scope of § 1343(3).

The district court's alternative ground for dismissing the complaints, that 28 U.S.C. § 2283 barred the award of any relief, was similarly erroneous. As the district court itself recognized, summary garnishment in Connecticut is not a "proceeding in a State court," within the meaning of § 2283. Garnishments are routinely levied, maintained and released without any involvement or participation by the state court. The levy of garnishment does not confer jurisdiction in an *in personam* suit against a resident debtor. Rather, service of process on the debtor, occurring after garnishment is levied, creates the state court's jurisdiction and institutes the suit. *Young v. Margiotta,* 136 Conn. 429, 433, 71 A.2d 924, 926 (1950). Garnishment "operates merely to secure any judgment that the plaintiff may obtain." Stephenson, *Connecticut Civil Procedure* 253 (1970 ed.).

Despite the state court's control over the creditor's docketed suit, garnishment is "distinct from and independent of" that suit. *Potter v. Appelby,* 136 Conn. 641, 643, 73 A.2d 819, 820 (1950). The garnished property is not secured under the control of the court, but in the hands of the garnishee. Conn. Gen. Stat. § 52-329. While the active participation and orders of the state court are essential to the progress of the creditor's suit, garnishment is wholly independent of any necessary involvement or participation by

the state court. Lacking any dependence upon the order of a court, summary garnishment in Connecticut must be deemed an out-of-court, non-judicial security remedy, and not a "proceeding in a State court."

The district court invoked § 2283 as a threshold bar to relief on the exclusive ground that enjoining garnishments, levied without notice or hearing, would "probably" interfere with state court proceedings, i.e., "*existing* creditors' suits" (App. 26) (emphasis added). But the wage-earners sought to enjoin prejudgment garnishments which the class of deputy sheriffs would levy, on behalf of alleged creditors, in future state court suits. The district court made no inquiry as to the propriety of prospective relief. Lacking a state forum for adjudicating their claims, the named wage-earners and the class which they represent should not be forced to undergo the suffering which future garnishments entail as a condition to testing their constitutionality. *Younger v. Harris*, 39 L.W. 4201, 4208 n.2 (1971) (Stewart J., concurring). The district court also erroneously failed to treat the wage-earners' request for a declaratory judgment. *Zwickler v. Koota*, 389 U.S. 241 (1967).

Nothing in the record supported the district court's inference that an injunction against summary garnishments would "probably" interfere substantially with existing creditors' suits. State law makes clear that garnishment is distinct from the pending creditor's suit; that the absence of garnishment does not affect the state court's jurisdiction; and that Connecticut is one of the few states permitting unrestricted garnishment by alleged creditors prior to institution of *in personam* damage suits. The court dismissed the complaints on an utterly barren record pursuant to the motions to dismiss. The landlord and the finance company failed to sustain their burden of proof on those motions. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

If summary garnishments are deemed proceedings in a state court, the district court nonetheless erred in refusing to award injunctive relief. 42 U.S.C. § 1983 constitutes an

exception to § 2283 where, as here, wage-earners will otherwise be deprived of substantial Fourteenth Amendment rights without redress in any judicial forum.

ARGUMENT

I. THE DISTRICT OF CONNECTICUT'S INTERPRETATION OF 28 U.S.C. § 1343(3) AND 28 U.S.C. § 2283 DEPRIVES INDIGENT LITIGANTS OF ANY FORUM FOR VINDICATING FEDERALLY-GUARANTEED CONSTITUTIONAL RIGHTS.

In 1969, this Court held that prejudgment garnishment of an alleged debtor's wages, without notice to him or opportunity to be heard, violated the Due Process Clause of the Fourteenth Amendment. *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969). Like Christine Sniadach, these wage-earners have been deprived of the use of their wages without a semblance of procedural due process. Their bank accounts, summarily garnished by alleged creditors, contained wages used for the common necessaries of life. The district court thus agreed that "there is no question of the substantiality of the constitutional claim" (App. 27). The court's dismissal of the complaints, however, effectively bars Connecticut's wage-earners from vindicating in a federal forum the federally-guaranteed constitutional rights which this Court established for them in *Sniadach*.

Like the federal court, Connecticut's courts deny wage-earners a forum to contest the propriety of garnishments levied upon their scarce assets. As the district court below observed, "No court order is required" to garnish a wage-earner's account (App. 23 n. 2).

> The plaintiff or his attorney merely includes in his writ of summons a direction to the sheriff to make an attachment or serve garnishment process.
>
> Stephenson, *Connecticut Civil Procedure* (1970 ed.), p. 151.

Garnishment is levied before the resident debtor is served with process. Service of process brings him within the jur-

isdiction of the court and initiates the state court suit. *Young v. Margiotta*, 136 Conn. 429, 433, 71 A.2d 924, 926 (1950). Since garnishment may occur nearly two months before a creditor must docket his suit in the circuit court, a distraught debtor may abandon his defenses and settle the case without any judicial mediation. Conn. Gen. Stat. §§ 52-48(a), 52-329.[6]

After the suit is docketed, the garnishment remains effective without any order, hearing, or action by the state court. The debtor may elicit a judicial response affording him, at best, only "meager safeguards," in two limited situations. Stephenson, *supra* at 154. The court may permit substitution of a bond with surety, Conn. Gen. Stat. § 52-304. But the cost of such a bond is beyond the means of most wage-earners (p. 46a; App. 49). Upon application of the debtor, the court may reduce an excessive garnishment after requiring the creditor to state the amount of his claim under oath. Conn. Gen. Stats. §§ 52-301, 52-302. Since the statute permits merely the reduction of a garnishment which unreasonably exceeds the creditor's "apparent claim," the court is barred from dissolving the garnishment unless the creditor refuses to appear as required. Conn. Gen. Stat. § 52-302. Although the creditor's claim "normally reflects the highest conceivable damages, costs and interest," Stephenson, *supra* at 157, garnishment in excess of this sum is permissible. Conn. Gen. Stat. § 52-302. It is, moreover, difficult to establish that the creditor's claim is inflated, Stephenson, *supra* at 216, since the court lacks jurisdiction

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[6] E.g., *Remington Arms Co. v. Feeney Tool Co.*, 97 Conn. 129, 115 A. 629 (1921) (debtor barred from recovering overpayment made to a creditor under duress of threatened attachment); *White v. Leary*, 6 Conn. Supp. 37, 38 (1938) (since state law "permits attachment as a matter of right," debtor "can not recover from the plaintiff for any damage resulting," absent a malicious prosecution). In her final brief (filed Sept. 30, 1970, pp. 52-53), Mrs. Lynch advised the court that deputy sheriff Friedler could provide evidence of settlements by alleged debtors in exchange for the release of attached and garnished property.

to inquire into the legal sufficiency of the complaint or the creditor's prospect of recovery. *Sachs v. Nussenbaum*, 92 Conn. 682, 689, 104 A. 393, 395 (1918). Scant protection is thus afforded against an excessive garnishment.

Debtors suffering from excessive garnishments and who are unrepresented by counsel lack the expertise necessary to invoke the state court's limited protection. Without any order or action by the state court, their assets will remain frozen until trial on the merits or settlement of their cases. Similarly, wage-earners like Mrs. Lynch and Mrs. Toro are unable to elicit any assistance from the state court. They cannot afford a surety bond, and their garnishments were not "excessive" in light of their creditors' apparent claims (App. 8, 11-12, 35-36, 39-40). "No statute in this state provides for the release of a garnishment for any other reason." *Clime v. Gregor*, 145 Conn. 74, 77, 138 A.2d 794, 795 (1958). "In the absence of specific statutory authority," *Harris v. Barone*, 147 Conn. 233, 234, 158 A.2d 855 (1960), the power to release a garnishment lies exclusively with the creditor and his attorney. See, e.g., *Monson v. Hawley*, 30 Conn. 51 (1861); *infra*, p. 48a.

Despite *Sniadach*, alleged creditors continue to garnish wages deposited in accounts without prior or subsequent hearing. Compare, *Goldberg v. Kelly*, 397 U.S. 254 (1970). Since settled law of the Connecticut Supreme Court authorizes garnishment in the discretion of the creditor and his attorney, any facts which might be adduced at a hearing are without legal significance. Several months before these wage-earners filed suit in district court, an attorney associated with their counsel sought release of a summary garnishment levied on an indigent client's bank account. Denying relief, the circuit court stated that "this court, recognizing its modest jurisdiction, is faced with and bound by the ruling in *Harris v. Barone*," *supra*, forbidding release of a garnishment in the absence of a statute. *Michael's Jewelers v. Handy*, #CV6-41307 (July 31, 1969). The appellate division granted the creditor's motion to dismiss the appeal, on

the ground that the court's refusal to dissolve the garnishment was not a final decision from which an appeal would lie. Conn. Gen. Stat. § 51-265. *Michael's Jewelers v. Handy*, 6 Conn. Cir. 103, 104-105, 107, 266 A.2d 904, 905, 907 (1969).[7] The court additionally stated that the rule in *Harris v. Barone, supra*, was binding authority and accorded the debtor due process in light of *Sniadach*. 6 Conn. Cir. at 107, 266 A.2d at 906.

Other than verifying his complaint upon application of the debtor to reduce the garnishment, therefore, the creditor need not demonstrate any probable validity to his claim. Nor must he show that the debtor is a non-resident whose property must be garnished for quasi-*in rem* jurisdiction. That the alleged debtor is a responsible individual who will not avoid payment of his legal obligations is similarly irrelevant. Even a showing that the garnishment is an abuse of process will not suffice for its release. *Csakany v. Takacs*, 143 Conn. 485, 487, 123 A.2d 764, 766 (1956). "Our statutes of long-standing permit one who, however mistakenly, claims that he has a right of action against another, to institute an action against him and, as auxiliary to that action, to make an attachment to secure his recovery." *Sachs v. Nussenbaum*, 92 Conn. 682, 688-89, 104 A. 393, 395 (1918).

Unrestrained garnishment in Connecticut invites abuse by deputy sheriffs, e.g., *United States v. Barr*, 295 F.Supp. 889 (S.D. N.Y. 1969); *Scarver v. Allen*, No. 70-C-253, _____ F.Supp. ____ (N.D. Ill. 1970); and by alleged creditors and their attorneys. The Honorable Douglass Wright, Judge of the Superior Court, stressed this danger in an address to newly-admitted members of the Bar:

> "One of your powers is the power to sign writs and subpoenas. This includes the power to attach, to garnish and sequester property. I cannot stress too strongly the awesome power that this is. It is a power not granted to lawyers in most other states.

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[7] Compare, *West v. Zurhorst*, 425 F.2d 919 (2nd Cir. 1970) (refusal to vacate attachment not appealable pursuant to 28 U.S.C. § 1291).

> The power to attach and garnishee is the power to harass. In most states an attachment or a garnishment cannot be obtained except by order of court. In Connecticut, however, you, as Commissioners of the Superior Court, have this innate power in your capacity as attorneys."
>
> Wright, The Duties and Obligations of a Lawyer, 40 Conn. Bar. J. 448, 449 (1966).[8]

Connecticut's wage-earners are trapped in a cruel dilemma. Unable to obtain judicial review, in either state or federal court, of summary garnishments levied on their scare assets, they may be forced by the imperatives of survival to settle claims which lack any validity. If they choose to exercise

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[8]Conn.Gen.Stats. §§ 51-85, 52-89 grant this power to attorneys. Certain restrictions on attorneys' unfettered discretion to attach property have been enacted by the state legislature. Conn.Gen.Stat. § 52-288 requires a court order prior to attaching an automobile. Senator Pickett stated: "This might be labeled as an anti-lawyers bill. It was felt by members of the Judiciary Committee and all people in the General Assembly, that there have been far too many abuses of the attachment procedures. In many examples, we have found that attorneys have been using this very serious and very powerful club, to force payments or settlements of paying by people who perhaps, weren't really liable to pay that claim... We feel that this rather ancient remedy available to creditors is much too strong and therefore, we have curtailed it." Proceedings of the Senate (May 8, 1969), p. 1728. Representative Carrozella, stating why an amendment was deleted permitting an attachment of a motor vehicle only "upon cause shown" and "after hearing," explained, "cause shown I think is implicit in the fact that you have to apply before a Judge." Proceedings of the House of Representatives (May 14, 1969), p. 2965. A court order is otherwise a condition of attachment only in certain specified suits (slander, libel, invasion of privacy); or against certain specified defendants (policemen, teachers). Conn.Gen.Stat. § 52-279.

The above restrictions apply only to attachment and not to garnishment. Stephenson, *supra* at 151-53. Conn.Gen.Stat. § 52-337a requires, as a condition of garnishing a checking account in excess of $5000, that the plaintiff verify to a judge that the debtor is a nonresident, is about to dispose of his property, or may conceal himself. Garnishment of wages in the hands of an employer is prohibited prior to judgment. Conn.Gen.Stat. § 52-361.

their right to a day in court, *Barbier v. Connolly*, 113 U.S. 27, 31 (1885), they must forego the use of property which is necessary for subsistence. Unrestricted garnishment, which erects a barrier to a wage-earner's use of the courts as substantial as an entry fee, *Boddie v. Connecticut, supra*, surely drives "a wage-earning family to the wall." *Sniadach v. Family Finance Corp., supra*, 395 U.S. at 341-42.[9] Compare, *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934).

The tragic dilemma faced by Connecticut wage-earners occurs simultaneously with decisions of this Court stressing the preeminent constitutional requirement of maintaining access to the courts. *Boddie v. Connecticut, supra; Flast v. Cohen*, 392 U.S. 83 (1969); *United Mine Workers v. Illinois Bar*, 389 U.S. 217 (1967). See, also, *Report of the National Advisory Commission on Civil Disorders*, p. 286 (Bantam Book 1968); American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts*, 4, 24-25, 162-68, 172-76 (1969). The wage-earners in this appeal will demonstrate that the district court's denial to them of a forum for vindicating their constitutional rights was unquestionably erroneous.

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[9] One Connecticut Senator has stated:

> "The attachment laws that we have in Connecticut have been abused. I think we are one of the few states that retain attachment at the institution of a suit. I think as an attorney I could cite many cases where poor people, small people have been attached for one hundred, one hundred fifty, two hundred dollars, and upon calling, I've advised them, take the easy way out and settle it. Regardless of legal rights, undue pressure has been put on them... If a man has a legitimate claim, let the courts determine it."

Proceedings of the Senate (May 31, 1963), p. 2779 (Senator Piccolo).

II. WHERE WAGE-EARNERS ALLEGED THAT CONNECTICUT DEPUTY SHERIFFS, ACTING IN CONCERT WITH ALLEGED CREDITORS AND THEIR ATTORNEYS, DEPRIVED THEM OF THE USE OF THEIR PROPERTY IN VIOLATION OF THE FOURTEENTH AMENDMENT, THEY PROPERLY INVOKED THE JURISDICTION OF THE DISTRICT COURT.

A. The District Court's Dismissal, on the Ground That § 1343(3) Did Not Confer Jurisdiction to Redress Unconstitutional Deprivations of Property, Was Erroneous.

The wage-earners in this appeal invoked the jurisdiction of the district court, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3), to redress the deprivation of Fourteenth Amendment rights by persons acting under color of state law. In so doing, the wage-earners were "on solid ground," *Monroe v. Pape*, 365 U.S. 167, 171 (1961), for

> Allegation of facts constituting a deprivation under color of state authority of a right guaranteed by the Fourteenth Amendment satisfies to that extent the requirement of [§ 1983]. *Id.*

The right of the working poor to use their wages, unimpeded by arbitrary state restrictions, lies at the core of the Fourteenth Amendment. *Infra*, pp. 28-32. In order to enforce its guarantees, §§ 1983 and 1343(3) were enacted as the Ku Klux Act of 1871. 17 Stat. 13. That Act, like the other Acts of Reconstruction to which it is intimately related, must be accorded the full scope commanded by its words and origins. *Jones v. Mayer Co.*, 392 U.S. 409 (1968); *United States v. Price*, 383 U.S. 787 (1966). Yet the district court dismissed the complaints on the ground that § 1343(3) did not confer jurisdiction to redress unconstitutional deprivations of "property." Since the wage-earners had failed, according to the court, to allege an unconstitutional deprivation of "personal liberty," § 1343(3) was inapplicable. Had their garnished wages exceeded $10,000 in value, 28 U.S.C. § 1331 would have accorded them a federal

forum. Since their meager assets are worth far less, the court dismissed the complaints.[10]

The court found support for its dismissal in *Eisen v. Eastman*, 421 F.2d 560 (2nd Cir. 1969). There the court of appeals stated that an "incongruity" would result by

> reading what is now 28 U.S.C. § 1343(3) so broadly that it would cover the entire ground later embraced by the present 28 U.S.C. § 1331, with its requirement of a jurisdictional amount, in all cases where natural persons complained of acts by state officers as violating the Constitution. 421 F.2d at 564.

Interpreting Mr. Justice Stone's concurring opinion in *Hague v. C.I.O.*, 307 U.S. 496, 518 at 531, the court of appeals thus held, "with a good deal less than complete assurance," that §§ 1343(3) and 1983 applied only "whenever the right or immunity is one of personal liberty, not dependent for its existence upon the infringement of property rights." 421 F.2d at 566, 564, 563 n.5.[11]

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[10]This Court's ruling in *Sniadach* hardly sought to protect wealthy persons exclusively. The value of Miss Sniadach's garnished wages was only $31.59. 395 U.S. at 338, 346. As a result of the district court's dismissal, however, only persons who are threatened with garnishment in excess of $10,000 can invoke its jurisdiction. The district court's decision, under which access to the federal court is determined on the basis of wealth, raises serious questions as to the constitutionality of § 1343(3). *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *Bynum v. Connecticut Commission on Forfeited Rights*, 410 F.2d 173 (2nd Cir. 1969). See, also, *Johnson v. Harder*, No. 35168, ____ F.2d ____ (2nd Cir. 1971), slip opinion at 1473 n.6.

[11]This reasoning has been criticized in numerous journals: Note, 1970 Duke L.J. 819 (1970); Laufer, *Hague v. C.I.O.*: Mr. Justice Stone's Test of Federal Jurisdiction—A reappraisal, 19 Buff.L.Rev. 547 (1970); Note, 49 B.U.L.Rev. 377 (1969); Note, 43 N.Y.U.L.Rev. 1208 (1968); Note, 66 Harv. L.Rev. 1285 (1953). Any alleged overlap between the two statutes occupies only a small portion of the vast terrain of federal jurisdiction created in 1875 by § 1331. Many other jurisdictional statutes "overlap" with § 1331. Indeed since § 1331's enactment in 1875, Congress has created a myriad of federal rights, and conferred jurisdiction in federal courts without regard to amount in controversy. Hart & Wechsler, *The Federal Courts and the Federal System*, 730-1 (1953 ed.).

Mr. Justice Stone's concurring opinion cannot be read to deprive wage-earners of a federal forum to vindicate their Fourteenth Amendment rights. The dispositive portion of his opinion is his assertion, explicitly rejected in *Eisen*, that § 1343(3) "*at least* must be deemed to include suits in which the subject matter is one incapable of valuation." 307 U.S. at 530 (emphasis supplied). *Eisen v. Eastman, supra*, 421 F.2d at 564 n.7. Justice Stone's decision held that § 1343(3) existed not merely to redress violations of the nearly-moribund Privileges and Immunities Clause, upon which Justice Roberts based jurisdiction. 307 U.S. at 512-514. Section 1343(3) also granted jurisdiction to redress violations of the Due Process Clause. *Id.* at 518-32. See, *Monroe v. Pape, supra*, 365 U.S. at 205-206 (Frankfurter, J., dissenting). "It must be remembered that Justice Stone was trying to preserve section 1343(3) jurisdiction from being swallowed by § 1331, not vice versa." Note, 1970 Duke L.J. 819, 837 (1970).[12] Section 1343(3) clearly required

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[12] § 1343(3) had fallen into disuse at the time of Justice Stone's opinion in *Hague*. Note, 66 Harv.L.Rev. 1285, 1286-87 (1953); Gressman, The Unhappy History of Civil Rights Legislation, 50 Mich. L.Rev. 1323 (1952). The Supreme Court had created considerable doubt as to the viability of §§ 1983 and 1343. *Holt v. Indiana Mfg. Co.*, 176 U.S. 68, 72 (1900). Even the right to vote had been accorded a pecuniary valuation to meet the "amount in controversy" requirement of § 1331. E.g., *Wiley v. Sinkler*, 179 U.S. 58 (1900); cf. *Lane v. Wilson*, 307 U.S. 268 (1939).

Holt v. Indiana Mfg. Co., supra, was Justice Stone's lone example of an action to which § 1343 did not apply. 307 U.S. at 530. In *Holt*, a corporation complained of an unconstitutional taxation of its patent rights. Federal courts have long been loath to interfere with the operation of state tax laws. *Matthews v. Rogers*, 284 U.S. 521 (1932); 28 U.S.C. § 1341. See note 22, *infra*. Moreover, Justice Roberts explained the Supreme Court's denial of § 1343 jurisdiction in *Holt* on the ground that the plaintiff was not a natural person. 307 U.S. at 514. Indeed, Mr. Justice Stone stated that the Due Process Clause guarantees the liberty of natural persons only. 307 U.S. at 527. *But see, Northwestern Fertilizing Co. v. Hyde Park*, 18 Fed.Cas. 393 (C.C. Ill. 1873).

the district court to decide the wage-earners' complaints that their Fourteenth Amendment rights, whether of "liberty" or "property," had been violated under color of state authority. *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Rinaldi v. Yeager*, 384 U.S. 305 (1966). Compare, *United States v. Guest*, 383 U.S. 745, 753 (1966).

B. The Inconsistent and Unpredictable Decisions Spawned By the "Personal Liberty–Property Rights" Formula Require Its Rejection as a Test for Determining § 1343(3) Jurisdiction.

The second circuit test for § 1343(3) jurisdiction requires a court to determine whether a litigant has suffered a deprivation of "liberty" or merely of "property." The difficulties inherent in such a judgment have engendered much litigation. The district court's decision is but one of the inconsistent and unpredictable results.

Connecticut's working poor may be deprived of the use of wages essential for subsistence without the rudiments of a hearing. No state avenues exist for contesting the propriety of garnishments levied by alleged creditors, whose claims may lack any validity. Despite these facts, the district court dismissed the complaints. Yet in *Escalera v. New York City Housing Authority*, 425 F.2d 853 (2nd Cir. 1970), cert. den., 39 L.W. 3149 (1970), the second circuit held § 1343 (3) satisfied where the plaintiffs alleged a denial of procedural due process, "a civil right." *Id.* at 864. The plaintiffs in *Escalera* sought the federal court's aid in protecting their leasehold interest in real property, to wit, public housing. The court ordered a panoply of procedure to protect a tenant from the arbitrary levy of a two dollar fine for violation of a minor rule. *Id.* Surely the working poor are no less entitled to the court's solicitude.

In the second circuit, the question whether license revocations or discharges from public employment, without procedural due process, will support § 1343(3) jurisdiction has

produced irreconcilable answers. *Tichon v. Harder*, No. 35151, _____ F.2d _____ (2nd Cir. 1971), repudiated *Escalera's* reasoning:

> For purposes of §1343(3) jurisdiction, the claim that appellant was denied procedural due process has no independent jurisdictional significance... [R]ather, the *Hague* and *Eisen* test focuses on the interests claimed to be injured by the denial of procedural due process, because it is the character of those interests that determines whether the suit involves a 'right of personal liberty' or not. Slip opinion at 1550-51.

Miss Tichon's allegations, that she had been discharged by the state welfare department as a probationary social worker without notice or hearing, established a substantial constitutional question. Slip opinion at 1557. Nevertheless, she was denied a federal forum. Yet *Eisen v. Eastman, supra*, 421 F.2d at 565, suggested that jurisdiction in such cases should be entertained, since they complain of "a deprivation of the personal liberty to pursue a calling of one's choice." But in *Gold v. Lomenzo*, 425 F.2d 959 (2nd Cir. 1970), the court (per Friendly, J.) found jurisdiction where the plaintiff's license to sell real estate would be restored upon payment of $585. Judge Hays, in dissent, argued that the broker had been deprived of a property right only. 425 F.2d at 963. The result in *Gold* was approved in *Tichon*, although the court there held that, for jurisdiction to exist, "the impact on the person's calling must be such as effectively to deprive him of his livelihood." Slip opinion at 1555 n.9.

Summary garnishment may, like summary dismissal from public employment, effectively deprive the low-income wage-earner "of his livelihood." The working poor eke out a barely marginal subsistence, and are frequently struggling (like Mrs. Toro) to remove themselves from the welfare rolls (App. 45-46). Garnishment of only a small sum, with no opportunity for a prior or subsequent hearing, drives "a wage-earning family to the wall." *Sniadach v. Family*

Finance Corp., supra, 395 U.S. at 341-42. The inability to meet life's necessary costs, including work-related expenses, may strip the debtor of his ability to earn a living:

> The power of the individual to earn a living for himself and those dependent upon him is in the nature of a personal liberty quite as much if not more than it is a property right. To preserve its free exercise is of the utmost importance, not only because it is a fundamental private necessity, but because it is a matter of great public concern. From the viewpoint of the wage-earner there is little difference between not earning at all and earning wholly for a creditor. Pauperism may be the necessary result of either. *Local Loan Co. v. Hunt,* 292 U.S. 234, 245 (1934).

See, also, *Truax v. Raich,* 239 U.S. 33, 41 (1915) (cited by Mr. Justice Stone in *Hague v. C.I.O., supra,* 307 U.S. at 531.)

In *Johnson v. Harder,* No. 35168, _____ F.2d _____ (2nd Cir. 1971), the court upheld, in the wake of contradictory district court opinions, §1343(3) jurisdiction where welfare recipients mounted a colorable constitutional challenge to a state's public assistance program.[13] *Johnson* establishes "*at*

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[13] By upholding jurisdiction in all such challenges, *Johnson* claimed to end the confusion as to § 1343(3)'s applicability in welfare cases. Slip opinion at 1473 n.6., 1474. Compare, *Solman v. Shapiro,* 300 F. Supp. 409 (D. Conn. 1969), affirmed, 396 U.S. 5 (1969), with, *Johnson v. Harder,* 318 F.Supp. 1274 (D.Conn. 1970), reversed, ____ F.2d ____ (2nd Cir: 1971). In *Russo v. Shapiro,* 309 F.Supp. 385, 391 (D.Conn. 1969), the district court accepted jurisdiction over plaintiffs' constitutional challenge to a welfare policy granting them a maximum of thirty dollars for school clothing, on the ground of the children's "'liberty'...to have clothing to wear to school." In *Middagh v. Harder,* ____ F.Supp. ____, No. 13,662 (D.Conn. 1970), the identical policy denied any school clothing allowance to AFDC children, regardless of their need, who had received income from summer employment or whose parents received incentive earnings. The district court refused jurisdiction on the ground that plaintiff's children had not been deprived of a "liberty."

This confusion, however, was revived in *Roberts v. Harder,* No. 35816, ____ F.2d ____ (2nd Cir. 1971), affirming, 320 F.Supp.

the very least, that deprivation of this kind of property, i.e., property necessary to keep a family at subsistence level, is covered by 28 U.S.C. §1343(3)." *Santiago v. McElroy*, 319 F.Supp. 284, 291 (E.D. Pa. 1970) (emphasis added). See, also, *King v. Smith*, 392 U.S. 309 (1968); *Wyman v. Rothstein*, 398 U.S. 275 (1970).

Summary garnishment of scarce assets may destroy a wage-earner's ability to meet his credit obligations. Consumer goods may be repossessed (App. 36, 46-47). "Bounced" checks create the threat of criminal prosecution. Conn. Gen. Stat. §53-361. "Bounced" checks, garnishments, and the judgments which enter in their wake adversely affect a wage-earner's liberty to engage in future transactions by placing him on a blacklist in the credit rating system. This blacklist is described by Congress as "an elaborate mechanism. . . for investigating and evaluating the credit worthiness, credit standing, credit capacity, character and general reputation of consumers." 84 Stat. 1128, 15 U.S.C. § 1681(a)(2) (1970) (Fair Credit Reporting Act §602(a)(2)).

Despite the district court's dismissal, damage to reputation has frequently sufficed for § 1343(3) jurisdiction.[14] In

1313 (D.Conn. 1970), where the court refused jurisdiction on the ground that the arbitrary action of the welfare department did not reduce the total amount payable to the recipient. Slip opinion at 2264.

[14]In *Birnbaum v. Trussell*, 371 F.2d 672 (2nd Cir. 1966), the court held that a physician summarily dismissed from a public hospital was entitled to prior notice and hearing. The court entertained jurisdiction pursuant to §1343(3). In *Tichon v. Harder*, *supra*, the court distinguished *Birnbaum* on the ground that Miss Tichon had "no *accumulated* reputation as a competent worker which the state arbitrarily destroyed." Slip opinion at 1556 (emphasis added). Miss Tichon, a recent graduate in social work who intended to pursue a career in that field, alleged that her vocational opportunities were severely restricted by summary dismissal as a probationary social worker at the welfare department. The court of appeals denied jurisdiction, although Miss Tichon's dismissal might prevent her from ever accumulating the "reservoir of standing and reputation" which Dr. Birnbaum possessed at the time of his expulsion. Slip opinion at 1555. See, also, *Kletschka v. Driver*, 411 F.2d 436, 446-47 (2nd Cir. 1969).

Dale v. Hahn, No. 35059, ____ F.2d ____ (2nd Cir. 1971), the court upheld jurisdiction in a challenge to the unconstitutional appointment of a conservator, since the "stigma" and the "consequences to reputation" "involve more than a property right." Slip opinion at p. 1590. Conservatorship destroyed plaintiff's "normal human relationships with others in her community," such as the "right to enter into legal relations, to control and dispose of property, to enter into contracts, and to sue and be sued." *Id.* The summary deprivation of wage-earners' property and consequent damage to their reputation similarly impairs their ability to contract, control their property, and assert their legal rights in court.

In attempting to apply the "personal liberty-property rights" formula, the second circuit has been keenly aware of its "troublesome history." *Tichon v. Harder, supra*, slip opinion at 1549. One panel of the second circuit has questioned its constitutionality. *Johnson v. Harder, supra*, slip opinion at 1473 n.6. *Eisen's* formula places courts in an insoluble dilemma. If the court seeks to comply with the rule that the "threshold question" of jurisdiction be determined by the allegations of the complaint, *Rosado v. Wyman*, 397 U.S. 397, 402, 403 (1970); *Bell v. Hood*, 327 U.S. 678 (1946), it must speculate as to the interests affected by an unconstitutional deprivation. On the other hand, if the court carefully examines the underlying interests, it converts the question of jurisdiction into a complex factual inquiry. *Tichon v. Harder, supra.* Compare, *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938); *Deutsch v. Hewes St. Realty Corp.*, 359 F.2d 96, 99-100 (2nd Cir. 1966) (in tort actions founded on diversity of citizenship, jurisdiction is determined by plaintiff's good faith statement of amount in controversy).[15]

The second circuit's application of the "personal liberty-property rights" test has created irreconcilable conflicts with

[15] *Tichon's* discussion of the facts was made possible only by reason of a trial in the district court. *Tichon v. Harder*, 308 F.Supp. 839 (D.Conn. 1970).

its own decisions, and with other circuits as well. Indeed, the dismissal by the court below contradicts numerous other opinions on virtually identical issues. *Laprease v. Raymours Furniture Co.*, 315 F.Supp. 716 (N.D. N.Y. 1970). Although the court of appeals for the third circuit has approved *Eisen, National Land and Investment Co. v. Specter*, 428 F.2d 91, 98-100 (3rd Cir. 1970), three-judge courts in that circuit have reached results opposed to the district court's dismissal. *Swarb v. Lennox*, 314 F.Supp. 1091 (E.D. Pa. 1970), prob. juris. noted, 39 L.W. 3424 (1971); *Santiago v. McElroy, supra.* See, also, *Klim v. Jones*, 315 F.Supp. 109 (N.D. Cal. 1970); *Hall v. Garson*, 430 F.2d 430 (5th Cir. 1970); *Fuentes v. Faircloth*, 317 F.Supp. 954 (S.D. Fla. 1970), prob. juris. noted, 39 L.W. 3359 (1971); but see, *McCormick v. First National Bank*, 39 L.W. 2474 (S.D. Fla. 1971).

The *Eisen* formula produces profound uncertainties in the delineation of federal jurisdiction to protect federal constitutional rights. Surely Civil Rights Act jurisdiction must rest on firmer ground than the subtle, tenuous and irrational distinctions spawned by the "personal liberty-property rights" test. Compare, *Sullivan v. Little Hunting Park*, 396 U.S. 229, 248 (1969) (Harlan, J., dissenting).

C. Sections 1983 and 1343(3) Required the District Court to Adjudicate Wage-Earners' Complaints That Persons Acting Under Color of State Law had Garnished Their Accounts In Violation of the Fourteenth Amendment.

1. *The Legislative and Judicial History of Sections 1983 and 1343(3) Conclusively Demonstrate That Those Statutes Were Designed to Redress Deprivations of Property, Without Procedural Due Process or Equal Protection, By Persons Acting Under Color of State Law.*

Summary garnishment arbitrarily deprives the working poor of "the right to enter into legal relations, to control and dispose of property, to enter into contracts, and to sue and be sued." *Dale v. Hahn, supra.* These very rights were deemed fundamental by the first Reconstruction Congress. Civil Rights Act of 1866, 14 Stat. 27; *Jones v. Mayer Co.*, 392 U.S. 409 (1968). Their protection from unconstitutional state action was assured by passage of the Fourteenth Amendment. Sections 1983 and 1343 guaranteed redress for their deprivation in a federal forum. Where no state forum exists to vindicate those rights, as in Connecticut, the responsibility of the federal courts to accept jurisdiction is compelling. *Monroe v. Pape,* 365 U.S. 167, 173-76 (1961).

This Court has traced the origin of § 1983 and its jurisdictional counterpart, § 1343(3), to the Civil Rights Act of 1866, 14 Stat. 27.[16] The Congress which passed the Act of

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[16] *Monroe v. Pape, supra,* 365 U.S. at 171, 183-85; *Adickes v. Kress & Co.,* 398 U.S. 144, 162-3 (1970); *Hague v. C.I.O., supra,* 307 U.S. at 508 n.10 (opinion of Roberts, J.). Where the § 1983 claim alleges constitutional violations by persons acting under color of law, § 1343(3) provides jurisdiction and both sections are construed identically. *Hague v. C.I.O., supra,* 307 U.S. at 529 (opinion of Stone, J.); *Douglas v. City of Jeannette,* 319 U.S. 157, 161 (1943); *Eisen v. Eastman, supra,* 421 F.2d at 563 n.5, 565 n.8; Note, 66 Harv.L.Rev. 1285, 1289 (1953). This case does not present the question whether

1866 guaranteed "broad and sweeping. . .protection," *Sullivan v. Little Hunting Park, Inc., supra,* 396 U.S. at 237, to "basic civil rights." *Jones v. Mayer Co.,* 392 U.S. 409, 432, 434 (1968). Among these were the rights to acquire and dispose of property. The Act

> "would affirmatively secure for all men, whatever their race or color, what [Senator Trumbull] called the 'great fundamental rights': the right to acquire property, the right to go and come at pleasure, the right to enforce rights in the courts, to make contracts, and to inherit and dispose of property:" *Id.* at 432.

One purpose of the Act of 1866 was to overturn the Black Codes. Frank and Munro, The Original Understanding of "Equal Protection of the Laws," 50 Colum. L.Rev. 131, 144-45 (1950); *Slaughter-House Cases,* 83 U.S. 36, 70 (1873). These codes deprived Negroes of the "commonest rights of human nature," including "the right to collect their wages by the processes of the law." Cong. Globe, 39th Cong., 1st Sess., 3034-35, App. 219 (1866); Bickel, The Original Understanding and the Segregation Decision, 69 Harv. L.Rev. 1, 52-53 (1955).

The Fourteenth Amendment vindicates for all persons the rights established by the Act of 1866.[17] Despite the Amendment's immediate purpose of shielding the recently-emancipated Negro,

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the reach of §§ 1983 and 1343 is coextensive in all cases. *Compare, McCall v. Shapiro,* 416 F.2d 246 (2nd Cir. 1969), with, *Gomez v. Florida State Employment Service,* 417 F.2d 569, 579-81 (5th Cir. 1969). See *King v. Smith,* 392 U.S. 309, 312 n.3 (1968).

[17]The Fourteenth Amendment was based upon the Civil Rights Act of 1866. One reason for adopting the Amendment was to assure the Act's constitutionality. *Monroe v. Pape, supra,* 365 U.S. at 171; *Railroad Tax Cases,* 13 Fed. Rep. 722, 739 (C.C. Cal. 1882); *Hurd v. Hodge,* 334 U.S. 24, 32-33 (1948); *Hague v. C.I.O., supra,* 307 U.S. at 509-510; Flack, *The Adoption of the Fourteenth Amendment,* pp. 75-78, 81, 90-91, 94-97 (1908).

> "the generality of the language used extends the protection of its provisions to persons of every race and condition against discriminating and hostile state action of any kind." *Railroad Tax Cases,* 13 F. 722, 740 (C.C. Cal. 1882).

See, also, *Slaughter-House Cases, supra,* 83 U.S. at 72; Bickel, *supra,* 69 Harv. L. Rev. at 60.

The Fourteenth Amendment unequivocally protects from unconstitutional state action "the right to acquire and possess property of every kind," as a fundamental privilege "which belong[s] of right to the citizens of all free governments." *Slaughter-House Cases, supra,* 83 U.S. at 76 (quoting from *Corfield v. Coryell,* 6 Fed. Cas. 546, 551 (1823)).

> "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own, and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee." *Shelley v. Kraemer,* 334 U.S. 1, 10 (1948).[18]

Congressmen debating both the Act of 1866 and the Fourteenth Amendment agreed unanimously that those enactments protected the "civil rights" to acquire, hold, and dispose of property. Whether voting, access to public accommodations, and attendance at integrated schools were similarly protected was hotly disputed. Flack, *supra,* at 21-30, 40-54; Bickel, *supra,* 69 Harv. L. Rev. at 56-58. Summary garnishment, which denies the working poor the fruits of their labor without the barest safeguard of even cursory

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[18] See, also, *Buchanan v. Warley,* 245 U.S. 60, 74, 76, 77, 79 (1917); *Scott v. City of Toledo,* 36 F. 385, 395-96 (C.C. Ohio 1888); *Northwestern Fertilizing Co. v. Hyde Park,* 18 Fed. Cases 393 (C.C. Ill. 1873); *Railroad Tax Cases, supra,* 13 F. at 762-63 (Sawyer, J., concurring); *Chicago B & Q R. Co. v. Chicago,* 166 U.S. 226, 235-36 (1897).

judicial supervision, thus violates rights which lie at the core of the Fourteenth Amendment.

Against this background, sections 1983 and 1343 were included as § 1 of the Ku Klux Act of 1871. *Supra*, note 16; *Wisconsin v. Constantineau*, 39 L.W. 4128, 4129 n.4 (1971). Widespread deprivation in the southern states of life, liberty and property, "which include all civil rights that men have," *Civil Rights Cases*, 109 U.S. 3, 13 (1883), endangered the success of the Reconstruction enactments. *Monroe v. Pape, supra.* The denial of these fundamental rights without constitutional safeguards resulted in passage of the Act of 1871 "to enforce the Provisions of the Fourteenth Amendment." 17 Stat. 13; *Monroe v. Pape, supra*, 365 U.S. at 171. Its legislative history is characterized by a "tone...of overflowing protection of constitutional rights." *Id.* at 196 (Harlan, J., concurring), 253 (Frankfurter, J., dissenting).[19] Representative Shellabarger, who chaired the House Select Committee which drafted the Ku Klux Act,[20] stated that § 1983 was "carefully confined to giving a civil action for such wrongs against citizenship as are done under color of state laws." The rights of all persons which § 1983 would protect from unconstitutional deprivation, he explained, include the "fundamental" right "to acquire and possess property of every kind." Cong. Globe, 42nd Congress, 1st Sess., App. 68-69 (quoting from *Corfield v. Coryell, supra*).

The Reconstruction Congresses did not write their landmark legislation on a clean slate. It was a "settled principle," *Pierson v. Ray*, 386 U.S. 547, 554 (1967), that rights

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[19]The legislative history of § 1983 is examined in *Monroe v. Pape, supra;* Note, *supra*, 1970 Duke L.J. 819, 833-39 (1970); Note, 21 Rutg. L. Rev. 92, 105-112 (1966).

[20]*Monroe v. Pape, supra*, 365 U.S. at 228 n.41 (Frankfurter, J., dissenting).

in property were essential "civil rights."[21] Where low-income wage-earners have been denied the use of wages necessary for subsistence, without a scintilla of due process and without any redress in the state courts, surely they too have suffered deprivation of "basic civil rights." *Jones v. Mayer Co., supra,* 392 U.S. at 427, 432, 434; *Hague v. C.I.O., supra,* 307 U.S. at 509 (opinion of Roberts, J.); tenBroek,

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[21] Locke, *Of Civil Government,* 179-80 (Everyman's Library ed. 1936); S. Adams, "The Rights of the Colonists" (1772) [in Coker, *Democracy, Liberty, and Property,* 320-21 (1948)]; J. Adams, "A Defense of the Constitutions of Government of the United States of America" (1787-88) [in *id.* at 125-26]; J. Adams, *Discourses on Davila,* (1789-90) [in *id.* at 466]; Blackstone, *Commentaries,* Vol. I, p. 139 (12th Ed. 1794). The term "civil rights" included property rights, and was distinguished from "political rights." Blackstone, *Commentaries,* Vol. I, pp. 127-29 (14th Ed. 1803); Kent, *Commentaries,* Vol. II, pp. 1-6 (4th Ed. 1840); Flack, *The Adoption of the Fourteenth Amendment,* pp. 21, 22, 24-30, 34-35, 40-41, 51-54 (1908); tenBroek, *The Antislavery Origins of the Fourteenth Amendment, supra,* Chapter X. Compare, *Jones v. Mayer Co., supra,* 392 U.S. at 473-74 (Harlan, J., dissenting); *United States v. Arizona,* 39 L.W. 4027, 4041-42 (1970) (opinion of Harlan, J.).

The view that "property rights" are separable from, or a threat to, "personal liberty" is of fairly recent origin in this country. Professor Reich traces this view to the development of vast aggregations of private power in the modern corporation. Reich, The New Property, 73 Yale L.J. 733, 771-74 (1964). This development, however, should not obscure the fact that:

> "Property performs the function of maintaining independence, dignity and pluralism in society by creating zones within which the majority has to yield to the owner.... The Bill of Rights also serves this function, but while the Bill of Rights comes into play only at extraordinary moments of conflict or crisis, property affords day-to-day protection in the ordinary affairs of life. Indeed, in the final analysis the Bill of Rights depends upon the existence of private property." *Id.* at 771.

In the absence of protection to property, therefore, "almost all other rights would become worthless." *Chicago B & Q R. Co. v. Chicago,* 166 U.S. 226, 235-36 (1897).

See, e.g., *Goldberg v. Kelly,* 397 U.S. 254 (1970).

The Antislavery Origins of the Fourteenth Amendment, Chapter X and pp. 160-61 (1951).

2. *28 U.S.C. § 1331 Has Not Restricted the Scope of Civil Rights Act Jurisdiction.*

Section 1331's passage by Act of March 3, 1875, 18 Stat. 470, was a "revolutionary" development. Frankfurter & Landis, *The Business of the Supreme Court*, 65 (1928). For the first time, "the vast range of power which had lain dormant in the constitution since 1789," *id.*, was conferred on federal courts to hear all cases arising under the Constitution and laws. Constitution, Article III § 2. The broad scope of § 1331 conforms with the far-reaching expansion of federal authority wrought by the other Reconstruction enactments. The Act of 1875 therefore "clearly is part of, rather than an exception to, the trend of the legislation which preceded it." Chadbourn, Original Jurisdiction of Federal Questions, 90 U.Pa. L.Rev. 639, 645 (1942); *Zwickler v. Koota*, 389 U.S. 241, 245-48 (1967).

In view of the expansive purpose of the Act of 1875, the second circuit's conclusion in *Eisen v. Eastman, supra*, that § 1331 restricts the scope of § 1343 jurisdiction is insupportable. The only significant legislative history of the Act of 1875, enacted only four years after the Ku Klux Act, is the draftsman's statement that the Act gives precisely the jurisdiction which the Constitution confers. Chadbourn, *supra*, 90 U.Pa. L.Rev. at 642-43. Not the faintest glimmer appears of a Congressional intent to limit the scope of §§ 1983 and 1343.[22]

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[22] By contrast, federal jurisdiction to restrain the enforcement of state tax laws has been explicitly restricted by Congress, 28 U.S.C. § 1341, and by long-standing judicial policy. *Matthews v. Rogers*, 284 U.S. 521 (1932); *Dows v. City of Chicago*, 11 Wall. 108 (1870). See *Virginia Coupon Cases*, 114 U.S. 317 *et seq.* (1885); *Holt v. Indiana Mfg. Co., supra*, note 12; *Abernathy v. Carpenter*, 208 F.Supp. 793 (W.D. Mo. 1962), aff'd. mem., 373 U.S. 241 (1963); *Alterman Transp. Lines v. P.S.C. of Tenn.*, 259 F.Supp. 486 (M.D. Tenn. 1966), aff'd. mem., 386 U.S. 262 (1967); *Hornbeak v. Hamm*, 283 F.Supp.

In *United States v. Price*, *supra*, 383 U.S. at 797 (1966), this Court construed §1983's criminal analogue, upon which §§1983 and 1343 were based, to embrace "*all* of the Constitution and laws of the United States."[23] Absent an unmistakable intention by Congress to the contrary, the Acts of Reconstruction apply today with their original force. "The cardinal rule is that repeals by implication are not favored." *Jones v. Mayer Co.*, *supra*, 392 U.S. at 437; see, also, *Sullivan v. Little Hunting Park*, *supra*, 396 U.S. at 237-38. Compare, *U.S. Bulk Carriers Corp. v. Arguelles*, 39 L.W. 4101, 4103 (1971).

While §1331 lacks a "color of law" requirement, sections 1983 and 1343(3) are "carefully confined to giving a civil action for such wrongs against citizenship as are done under color of state laws." Cong. Globe, 42nd Cong., 1st Session, App. 68 (remarks of Rep. Shellabarger). Thus, where the allegedly unconstitutional action occurs under color of state

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549 (M.D. Ala. 1968), aff'd mem., 393 U.S. 9 (1968); *Gray v. Morgan*, 371 F.2d 172 (7th Cir. 1966); Note, 49 B.U.L.Rev. 377, 388-89 (1969); Note, 43 N.Y.U. L.Rev. 1208, 1213-16 (1968).

Lower federal courts have frequently adverted to these cases as support for a general proposition that § 1343(3) does not grant jurisdiction to redress unconstitutional deprivations of property rights. E.g., *Eisen v. Eastman*, *supra*, 421 F.2d at 564; *Tichon v. Harder*, *supra*. The tax cases, however, do not support this proposition, since a statute requires federal courts to decline jurisdiction. Moreover, abstention in these cases is based on an unwillingness to disrupt a state's "internal economy" by "restraining collection of state taxes." *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 298 (1943). See *Perez v. Ledesma*, 39 L.W. 4214, 4227 n.17 (opinion of Brennan, J.).

[23]Title 18 U.S.C. § 242 is the direct descendant of § 2 of the Civil Rights Act of 1866, *U.S. v. Price*, 383 U.S. at 802-803, upon which § 1983 was modeled. See note 16, *supra*; Cong. Globe, 42nd Congress, 1st Sess., App. 68 (1871) (Rep. Shellabarger). Most of § 1983's proponents were members of the Congresses which had passed the Act of 1866 and the other landmark Reconstruction statutes. Kates, Immunity of State Judges Under the Federal Civil Rights Acts, 65 Nw. U. L.Rev. 615, 621 (1970).

law no jurisdictional amount need be alleged. *Adickes v. Kress & Co.*, 398 U.S. 144, 150 (1970). The plain meaning of §§ 1983 and 1343(3), buttressed by their history, reflects Congress' deep concern for maintaining federal vigilance over unconstitutional deprivations, by persons acting under color of state law, of life, liberty and property.

The "personal liberty—property rights" test, pursuant to which the district court dismissed the complaints, emasculates the Act of 1871. Originally designed to provide a forum for the deprived and defenseless, the Act now bars indigent wage-earners from courts in the second circuit, where their fundamental interests are at stake, and where they lack redress in the state courts. No other result could so squarely contradict the intention of the Framers of the Acts of Reconstruction.

III. WHERE WAGE-EARNERS SOUGHT DECLARATORY AND INJUNCTIVE RELIEF, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, AGAINST GARNISHMENTS LEVIED SUMMARILY AND WITHOUT JUDICIAL AUTHORIZATION, CONTROL OR INVOLVEMENT, THE DISTRICT COURT ERRED IN DISMISSING THE COMPLAINTS ON THE GROUND THAT 28 U.S.C. §2283 BARRED THE AWARD OF ANY RELIEF.

A. Summary Garnishments are Not "Proceedings in a State Court," Within the Meaning of 28 U.S.C. §2283.

Under Connecticut law, see *Hill v. Martin*, 296 U.S. 393, 398-401 (1935), the summary garnishment of a resident debtor's account is not a proceeding in a state court, within the meaning of 28 U.S.C. §2283. Garnishment is an out-of-court, non-judicial security remedy to which alleged creditors and their attorneys unilaterally resort, in their absolute discretion, prior to instituting and docketing *in personam* suits in the state court. Compare, *Laprease v. Raymours Furniture Co.*, 315 F.Supp. 716 (N.D. N.Y.

1970.) For a summary garnishment to be effective from the date of levy until trial on the merits, no order, hearing, or action by the state court is necessary. The creditors' damage suits, from which the garnishments are distinct, are the only proceedings pending in the state court. As to those suits, the wage-earners requested neither declaratory nor injunctive relief.

Garnishments are routinely levied, maintained, and released without any involvement or participation by the state courts. The levy of garnishment does not confer jurisdiction upon the court. Indeed, garnishment occurs prior to institution of the creditor's suit. "[T]he service of the garnishment does not begin the action; that occurs only when the defendants are brought within the jurisdiction of the court by service of a writ upon them or by their voluntary appearance." *Young v. Margiotta,* 136 Conn. 429, 433, 71 A.2d 924, 926 (1950); Conn.Gen.Stat. §52-57 (requiring personal or abode service in suits against residents). In *in personam* suits against resident debtors, like the creditors' suits against Mrs. Lynch and Mrs. Toro (App. 26), the levy of garnishment therefore "is ancillary to and distinct from the process of service on the defendant." *Bay State Smelting Corp. v. Rosenfield,* 11 Conn. Supp. 261, 263 (1942); *Young v. Margiotta, supra.* Garnishment "operates merely to secure any judgment that the plaintiff may obtain." Stephenson, *supra* at 253. Contrast, *Gimbel v. Gimbel,* 147 Conn. 561, 564-65, 163 A.2d 451, 453 (1960) (in quasi-*in rem* action against non-residents, levy on defendant's property is essential to court's jurisdiction).

After garnishment is levied, the creditor's *in personam* suit is not a pending state court proceeding until the suit is docketed. *O'Brien v. Banet,* 16 Conn.Supp. 435 (1950). Only after docketing does the suit pass "beyond the physical control of the litigants and into that of the court." *Algonquin Gas Trans. Co. v. Becker,* 25 Conn. Supp. 448, 450, 206 A.2d 846, 847 (1952). Despite the court's control over the creditor's docketed suit, garnishment is "distinct from and independent of" that suit. *Potter v. Appleby,*

136 Conn. 641, 643, 73 A.2d 819, 820 (1950). The garnished property is secured, not under the control of the court, but merely "in the hands of such garnishee." Conn. Gen. Stat. § 52-329. After judgment, the creditor may be required to bring a separate action at law against the garnishee to compel his release of the property. Conn. Gen. Stats. §§ 52-381, 52-367a. See, *Chambers v. Blickle Ford Sales*, 313 F.2d 252, 256 (2nd Cir. 1963).[24]

While no order of court is required for levying, maintaining or releasing a garnishment, the active participation of the state court is essential to the progress of the creditor's docketed suit. Only the court, and not a party, may compel the production of documents, the entry of judgment, and the other incidents of a routine proceeding in a state court. By contrast, from the date of levy until final disposition of the creditor's suit, garnishment is wholly independent of any necessary involvement or participation by the state court. The extremely limited responses which a court *may* make to the garnishment—i.e., ordering the substitution of a surety bond or reducing an excessive garnishment—depend for their initiation upon the debtor. Absent a stimulus from the debtor, an alleged creditor freezes a wage-earner's scarce assets for perhaps several years without any participation by the state court. *Supra*, pp. 13-18. Lacking any dependence upon the order of a court, garnishment

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[24]Contrast the rule forbidding federal interference with property under the control of a court and attached pursuant to the court's order. "The possession of the officer cannot be disturbed . . . because to disturb the possession would be to invade the jurisdiction of the court by whose command it is held." *Covell v. Heyman*, 111 U.S. 176, 179 (1884). See, also, *Javelin Oil Co. v. Morrow*, 266 F.Supp. 119 (W.D. La. 1966); *Moran v. Sturges*, 154 U.S. 256, 287 (1894) (Brewer, J., dissenting): "No one would pretend that the act of a marshal or sheriff in taking possession of property would have any significance unless it were in the execution of some order of the court." See, also, *In Re Chetwood*, 165 U.S. 443, 457, 459 (1897). Connecticut is among the small minority of states permitting garnishment without any judicial intervention whatever. Stephenson, *supra* at 230.

must be deemed an out-of-court, non-judicial security remedy, and not a "proceeding in a state court" within the meaning of § 2283.

The district court recognized that summary garnishment is not a proceeding in a state court. It correctly observed that "garnishment may be separated from the underlying *in personam* action" (App. 26), and that garnishments are levied and released without state court order (p. 48a; App. 23 n. 2). Moreover, the district court identified the proceedings in the state court as "existing creditors' suits" and not as garnishments (App. 26). Although the court did state that service of "garnishment papers. . . began state court proceedings" (App. 26), this conclusion is erroneous as a matter of state law. *Young v. Margiotta, supra.* The district court invoked § 2283 as a bar to relief on the exclusive ground that enjoining garnishments, levied without notice or hearing, would interfere with state court proceedings, i.e., existing creditors' suits. See *infra,* pp. 40-42.

Section 2283 secures "the right of state courts to exert their judicial power." *P.S.C. v. Corboy,* 250 U.S. 153, 161 (1919). It does not shield a private collection remedy from the scrutiny of a federal court, where that remedy is fully effective without any judicial involvement. Since garnishment occurs independently of state court order, review or participation, § 2283's policy of avoiding friction "between two systems of courts having potential jurisdiction over the same subject-matter," *Hale v. Bimco Trading Co.,* 306 U.S. 375, 378 (1939), is simply inapplicable. A federal injunction against pending state court *in personam* suits might indeed cause "unseemly interference with the orderly disposal of litigation in the state court." *Wells Fargo v. Taylor,* 254 U.S. 175, 183 (1920). But injunctive relief against garnishments levied in Connecticut without notice or hearing creates no danger that the federal and Connecticut courts will "fight each other for control of a particular case." *Atlantic Coast Line R. Co. v. Engineers,* 398 U.S. 281, 286 (1970).

B. The Anti-Injunction Statute Does Not Excuse A Federal Court From Considering the Propriety of Declaratory and Future Injunctive Relief, on Behalf of the Named Plaintiffs and Other Similarly Situated.

In holding that 28 U.S.C. § 2283 barred the award of any relief, the district court erred. Irrespective of the question of § 2283's applicability, the court was bound to consider the wage-earners' request for a declaratory judgment. *Zwickler v. Koota*, 389 U.S. 241 (1967); *Johnson v. Lee*, 281 F.Supp. 650, 653 (D.Conn. 1968). The court wholly failed to treat that request. Yet "the plain wording of § 2283 . . . bars only *injunctions* designed to stay court proceedings." *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 198 (1959); *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270 (1941); *Mitchell v. Donovan*, 398 U.S. 427, 430 (1970) (interpreting 28 U.S.C. §1253). Lacking a state forum for adjudicating their claims, indigent Connecticut wage-earners have suffered deprivations which are of sufficient immediacy to qualify for declaratory relief. *Younger v. Harris*, 39 L.W. 4201 (1971); *Perez v. Ledesma*, 39 L.W. 4214, 4216 (1971) (Brennan, J., concurring).

The named Connecticut wage-earners also sought to enjoin prejudgment garnishments which the class of deputy sheriffs and sheriffs would levy, on behalf of alleged creditors, in future state court suits (App. 6, 10, 34, 37-38). Not even arguably would § 2283 bar such an injunction. *Cline v. Frink Dairy Co.*, 274 U.S. 445, 451-3 (1927); *Dombrowski v. Pfister*, 380 U.S. 479, 484 n. 2 (1965); *Ex Parte Young*, 209 U.S. 123 (1908). The court, which dismissed the complaints on the ground that enjoining summary garnishments would probably interfere with *"existing" in personam* suits (App. 26), made no inquiry as to the propriety of prospective relief.

Despite the threat of future garnishment, the court suggested that release of the landlord's garnishment might moot Mrs. Toro's complaint (App. 22 n. 1). But indigent wage-

earners should not be forced to undergo the suffering which future garnishments entail, as a condition to testing their constitutionality, when they have no opportunity to challenge their validity in state court. See, *Younger v. Harris, supra,* 39 L.W. at 4208 n. 2 (Stewart, J., concurring).[25]

The Connecticut wage-earners also requested declaratory and injunctive relief on behalf of the class of persons whose assets were garnished or subject to garnishment in the future. The court held no hearing, pursuant to Rule 23(c), to aid in an informed determination of plaintiff and defendant classes. Based on its holding that it lacked jurisdiction, the court held that a class could consist only of those persons who were deprived of a "personal liberty" by reason of summary garnishment. "No such class could be defined as a practical matter." (App. 25) Since the district court erroneously refused jurisdiction, its holding that the actions were not class actions must be reversed.[26]

C. The District Court's Inference, on a Barren Record and Pursuant to Motions to Dismiss, that Injunctive Relief Against Summary Garnishments would "Probably" Interfere with "Existing Creditors' Suits," was Improper

On a barren record, lacking any evidence, the court invoked § 2283 as a threshold bar to relief on the sole ground that an injunction against summarily-levied garnishments would "probably" interfere substantially with existing state

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[25] The "suggestion of mootness" seems particularly inappropriate in view of the court's denial of Dancosse's request to intervene at the motion to dismiss stage of the action, on the ground that the case was already "fully submitted." R.Doc. No. 29. See, p. 8 and note 5, *supra.*

[26] In her final brief (Sept. 30, 1970, pp. 52-55), Mrs. Lynch detailed the evidence necessary to determine the classes, and stated her intention to develop this evidence through deposition and discovery.

court creditors' suits (App. 26).[27] Nothing in the record supported the court's inference. The only evidence which bore even indirectly on the court's inference tended to refute it. Mrs. Toro's creditor released the garnishment voluntarily, without apparent prejudice to his state court suit. Nothing indicated that the finance company's suit against Mrs. Lynch would encounter "substantial interference" by a federal injunction against garnishments levied without notice or hearing. Nothing suggested that Mrs. Lynch, an employed Connecticut resident who was raising a family and over whom the state court had *in personam* jurisdiction, would evade payment of any judgment that might be rendered against her.

The court failed to define the components of "substantial interference." State law makes evident the fact that garnishment is wholly distinct from the pending *in personam* action; that the absence of garnishment does not affect the court's jurisdiction; and that alleged creditors suffer few of the restrictions on garnishment which pertain elsewhere in the country. It surely strains credulity to argue that "the great object" of these wage-earners' federal suit "is to enjoin and stop litigation in the State courts." *Haines v. Carpenter*, 91 U.S. 254, 257 (1875). Indeed, the class defendants in the federal action, Connecticut deputy sheriffs, were not even parties in the state court. *Hale v. Bimco Trading Co., supra; Chase National Bank v. City of Norwalk*, 291 U.S. 431 (1934).

Whether § 2283 barred relief was not a "threshold question." On a motion to dismiss, the "question is not whether § 2283 bars relief but whether the complaint alleges a basis for equitable relief." *Tyler v. Russell*, 410 F.2d 490, 491 (10th Cir. 1969). The issue of § 2283's applicability may

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[27] This Court has rejected the doctrine that § 2283 forbids a federal court to examine the merits of a case on the ground that it might award relief substantially interfering with state court proceedings. *Kline v. Burke Construction Co.*, 260 U.S. 226 (1922); *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 190-91 (1959).

then be determined "under the allegations and proofs," resulting in a "decision going to the merits of the controversy." *Smith v. Apple*, 264 U.S. 274, 279, 280 (1924); *Toucey v. New York Life Insurance Co.*, 314 U.S. 118, 130 n. 2 (1941). On the barren record before the court, the landlord and the finance company utterly failed to sustain their burden of proof on the motions to dismiss:

> [A] complaint should not be dismissed for failure to state a claim unless it appears *beyond doubt* that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) (emphasis added).

See, also, *Jenkins v. McKeithen*, 395 U.S. 411, 421-422 (1969). In inferring that an injunction "probably" would interfere with existing state *in personam* suits, the district court violated the basic procedural rule ensuring a litigant his day in court.

> "The observations made in the course of the opinion are not, in any proper sense, findings of fact upon these vital issues. Statements of fact are mingled with arguments and inferences for which we find no sufficient basis . . ." *Mayo v. Canning Co.*, 309 U.S. 310, 316 (1940).

D. If Summary Garnishments are Proceedings in a State Court, § 1983 Authorized the District Court to Grant an Injunction on Behalf of Wage-Earners Who are Denied a State Court Forum

If this Court should conclude that garnishments, levied summarily and without judicial involvement, are proceedings in a state court, the district court nevertheless erred in refusing to award injunctive relief. These wage-earners have demonstrated that Connecticut's courts deny them a forum for contesting the validity of garnishments levied on their scarce assets. In this situation, the underpinning of § 2283 and the doctrine of comity, "that courts of equity should

not act . . . when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief," is inapplicable. *Younger v. Harris*, 39 L.W. 4201, 4203. Both § 2283 and the comity doctrine rest

> "on the assumption that state tribunals will adequately protect these rights. Upon a showing that this assumption is unfounded, a federal court may have discretion to intervene despite the general policy." Note, 83 Harv.L.Rev. 1870, 1873 (1970).

Section 1983 was enacted for several distinct purposes. One such purpose was to supply a federal remedy for the vindication of federal rights where state laws were inadequate either in theory or in practice. *Monroe v. Pape, supra*, 365 U.S. at 173-77. Mere inadequacy of state remedy might not be considered sufficiently compelling to require federal intervention. But where, as here, a debtor in a state court civil suit lacks even a forum for raising federal issues of constitutional significance, § 2283 does not apply. Compare, *Local Loan Co. v. Hunt, supra.*

> "[T]o say that Congress can do no such thing as make any law so enforcing these rights, nor open the United States courts to enforce any such laws, but must leave all the protection and law-making to the very States which are denying the protection, is plainly and grossly absurd . . .
>
> If, after all this transcendent profusion of enactment in restraint of the States and affirmative conferment of power on Congress, the States still remain unrestrained, the complete, sole arbiters of power . . . and the United States must stand by a powerless spectator of the overthrow of the rights and liberties of its own citizens, then not only is the profusion of guards put by the fourteenth amendment around our rights a miserable waste of words, but the Government is itself a miserable sham, its citizenship a curse, and the Union not fit to be. Cong. Globe, 42nd Cong., 1st Sess., App. 68, 69 (1871) (Rep. Shellabarger).

See, also, *Hulett v. Julian*, 250 F.Supp. 208 (M.D. Ala. 1966) (three-judge court); *Honey v. Goodman*, 432 F.2d 333, 343 (6th Cir. 1970).

In most instances, state courts are fully qualified to hear and determine issues of federal law which are raised in the context of state court proceedings. *Atlantic Coast Line R. Co. v. Engineers, supra.* Federal interference with such proceedings is therefore generally inappropriate. But the denial by Connecticut of a forum for wage-earners to contest summary garnishments compels federal intervention. Compare, *Lane v. Wilson*, 307 U.S. 268, 274 (1939). The district court's failure to adjudicate the merits of the complaints renders wage-earners without any forum to hear their claims, and vitiates Congress' purpose in enacting § 1983:

> "Indeed, reasonable access to the courts is basic to all other rights protected by the Act [§ 1983], for it is essential to their enforcement." *Stiltner v. Rhay*, 322 F.2d 314, 316 (9th Cir. 1963).

See, also, *Boddie v. Connecticut, supra.*

This Court must not permit wage-earners' substantial Fourteenth Amendment rights to be denied without a hearing in either state or federal court. "It is open to [Connecticut], by changes in the provisions of [its] statutes, to remove this basis for the exercise of equitable jurisdiction by the federal courts, and thus to confine the trial of such cases in the first instance to the state courts." Warren, Federal and State Court Interference, 43 Harv.L.Rev. 345, 377-78 (1930). In the absence of a state judicial forum, however, the district court's dismissal of the complaints must be reversed by this Court.[28]

---

[28] If summary garnishments are deemed "proceedings in a state court," § 2283 similarly permits injunctive relief as necessary in aid of the district court's jurisdiction, pursuant to 28 U.S.C. § 1343(3). Absent a state court forum, wage-earners' constitutional rights will otherwise be lost. See, *Caulder v. Durham Housing Authority*, 433 F.2d 998, 1001 (4th Cir. 1970), cert. den., 39 L.W. 3421 (1971).

CONCLUSION

For the reasons above stated, it is respectfully submitted that the judgment of the district court, dismissing the complaints pursuant to the motions to dismiss, should be reversed, and the case remanded for a hearing on the merits.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

DOROTHY LYNCH, ET ALS, :
Plaintiffs,

v. : CIVIL ACTION
NO. _____

HOUSEHOLD FINANCE
CORPORATION, ET ALS,
Defendants

AFFIDAVIT

STATE OF CONNECTICUT)
) ss: New Haven, February
COUNTY OF NEW HAVEN) , 1970

In an effort to secure the posting of a surety bond pursuant to § 52-304 of the Connecticut General Statutes, to release the pre-judgment attachment of $494.83 in the credit union account of Mrs. Dorothy Lynch, I, Clarance Joseph Jones, contacted several bonding and insurance companies. The responses received are described below.

1. In a telephone conversation on February 19, 1970 with Mr. James J. Healy of Golden O'Neill & Gebhardt, Inc., 185 Church Street, New Haven, Connecticut, I was informed that in order for their insurance and surety bond company to write this bond they would need 100% collateralization. Mr. Healy further stated that it is because of the 100% collateral requirement that their company is not called upon to write many bonds of this value.

2. On February 5, 1970 Mr. Paul Kerrigan of Fitzsimons, Kerrigan & Murray, Inc., 242 Orange Street, New Haven,

Connecticut informed me that his bonding company requires full cash collateral and a minimum premium of $20.00 in order to write a surety bond for $494.83.

3. On February 19, 1970, Mr. Joseph Newcomb of the Insurance Company of North America, 999 Asylum Avenue, Hartford, Connecticut, informed me that a surety bond for $494.83 would require full collateralization, as well as the payment of a service charge and a minimum premium of $10.00.

4. In a conversation on February 19, 1970 with a representative of Andrews & Blakelee, Inc., 2 Church Street, North Haven, Connecticut, I was informed that their insurance company normally does not write surety bonds for an amount as low as $494.83.

5. Mr. Richard Chamberlin of Chamberlin Agency, Inc., 433 Campbell Avenue, West Haven, Connecticut, informed me on February 19, 1970 that his insurance company does not write surety bonds for amounts under $2,000.00. Mr. Chamberlin stated further that the premiums on such bonds are low and are not profitable to his company. Moreover, Mr. Chamberlin stated that he would write a bond for the requested amount only to accommodate a policy holder who is a member of his company.

Clarance Joseph Jones

Subscribed and sworn to before me
on this day of February, 1970.*

---

*This affidavit was included in brief filed with district court, March 4, 1970.

CV8-702-9353

EUGENE A. CAMPOSANO	)	
	)	Eighth Circuit Court
v.	)	New Haven County
	)	March 24, 1970
NORMA TORO	)	

RELEASE OF ATTACHMENT

This is to certify that the attachment in the above entitled action of the personal estate of the above-named defendant consisting of funds in Bank Account *in the hands of* Hamden National Bank, 2992 Dixwell Avenue, Hamden, Connecticut *of the above-named defendant is released, and the lien of said attachment is hereby removed.*

Dated at New Haven, *Connecticut, this 24th day of March 1970.*

THE PLAINTIFF,

/s/
By Jerome A. Lacobelle

*His Attorney and Authority signing the Writ.**

---

*Included in brief filed with district court, April 30, 1970.

SUPREME COURT, U. S. 70-5058

Supreme Court, U.S.
FILED
JUN 14 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 6356

DOROTHY LYNCH, ET AL,

Appellants,

v.

HOUSEHOLD FINANCE CORP., et al,

Appellees.

NORMA TORO, et al,

Appellants,

v.

EUGENE A. CAMPOSANO, et al,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF OF THE APPELLEE, CHARLES H. BARRETT DEPUTY SHERIFF OF NEW HAVEN COUNTY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 6356

DOROTHY LYNCH, ET AL,

Appellants,

v.

HOUSEHOLD FINANCE CORP., et al,

Appellees.

NORMA TORO, et al,

Appellants,

v.

EUGENE A. CAMPOSANO, et al,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

APPELLANTS APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT ENTERED ON OCTOBER 22, 1970, DISMISSING THEIR COMPLAINTS UPON APPELLEE'S MOTION TO DISMISS.

OPINION BELOW

The opinion of the District Court for the District of Connecticut is reported in 318 F. Supp. 1111 and in the Appendix at pages 20 through 27.

JURISDICTION

Jurisdiction for the suit was claimed under 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983 and a permanent injunction and declaratory judgment was sought on allegations that the Connecticut garnishment statutes (Title 52, § 329, Connecticut General Statutes) were unconstitutional. A three-judge District Court was convened on March 9, 1970 pursuant to 28 U.S.C. §§ 2281 and 2284. The judgment of the District Court dismissing the action was entered on October 22, 1970 and a Notice of Appeal was filed on November 19, 1970. Appellants claim jurisdiction for the appeal in the Supreme Court under 28 U.S.C. §§ 1253 and 2101(b).

STATEMENT OF THE CASE

The Appellant, Norma Toro, plaintiff below, is a divorcee with one minor son. Mrs. Toro works in a shirt factory earning $85.00 per week and receives state welfare payments under the Aid for Dependent Children Program. (Appendix pages 34, and 45-46.)

On or about October 6 1969, Mrs. Toro leased first floor premises at 625 Main Street, East Haven, Conneticut, from Appellee, Eugene A. Camposano, for a period of one (1) year at a monthly rental of $150.00 per month. (Appendix pages 39 and 46.)

During the month of January, 1970 Mrs. Toro vacated said premises, resulting in a dispute between her and Mr. Camposano. (Appendix pages 38 through 40 and 45 through 47.)

On January 27, 1970 Attorney Jerome A. Lacobelle of New Haven, representing Mr. Camposano, issued a writ, summons and complaint, seeking $700 in damages, for service upon Mrs. Toro and further commanding a garnishment of

Acct. No. 02200049 at The Hamden National Bank, Hamden, Connecticut. (Appendix pages 38 through 41.) Attorney Lacobelle gave the writ, summons and complaint into the hands of Appellee, Charles H. Barrett, a deputy sheriff of New Haven County, for service and return to court.

Sheriff Barrett commenced service on January 30, 1970 by leaving a true and attested copy of the process at The Hamden National Bank and completed service on January 31, 1970 by abode service on Mrs. Toro. The writ, summons and complaint was returned to court by filing with the Clerk of the 8th Circuit Court on February 10, 1970. (See Appellant, Norma Toro's brief at page 10, note 3.)

At the time of the garnishment against Mrs. Toro's account at The Hamden National Bank on January 30, 1970, she had on deposit the sum of $103.99. (Appendix page 46.)

On March 16, 1970 Mrs. Toro executed a disclosure of defenses to Mr. Camposano's suit and filed the same with the 8th Circuit Court at West Haven, Connecticut. Said diselosure of defense does not set forth any claims that the garnishment statute in Title 52, Section 329, Connecticut General Statutes, is unconstitutional. (Appendix pages 47 and 48.)

Attorney Lacobelle released the attachment of Mrs. Toro's checking account on March 31, 1970. (Appendix page 22, footnote 1.)

This action for declaratory and injunction relief was filed in the United States District Court for the District of Connecticut on March 4, 1970. (Appendix page 33.)

The Appellee, Charles H. Barrett, Deputy Sheriff of New Haven County, filed a motion to dismiss on March 25, 1970. (Appendix page 52.) Said motion was granted by a three-judge court on October 22, 1970. (Appendix page 27.)

Notice of appeal to the Supreme Court of the United States was filed on November 19, 1970. (Appendix page 32.)

Probable jurisdiction was noted by the Supreme Court on March 1, 1971. (Appendix page 54.)

QUESTIONS PRESENTED

1. Did the three-judge District Court err in dismissing the action for want of jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. § 1343(c)?

2. Did the three-judge District Court err in dismissing the action under the anti-injunction statute 28 U.S.C. § 2283?

STATUTE IN QUESTION

I. Section 52-329, Connecticut General Statutes, Revision of 1958, Revised to 1969:

"Process of foreign attachment.

When the effects of the defendant in any civil action in which a judgment or decree for the payment of money may be rendered are concealed in the hands of his agent or trustee so that they cannot be found or attached, or when a debt is due from any person to such defendant, or when any debt, legacy or distributive share is or may become due to such defendant from the estate of any deceased person or insolvent debtor, the plaintiff may insert in his writ a direction to the officer to leave a true and attested copy thereof and of the accompanying complaint, at least twelve days in the case of the superior court or the court of common pleas, or six days in the case of the circuit court, before the session of the court to which it is returnable, with such agent, trustee or debtor of the defendant, or, as the case may be, with the executor, administrator or trustee of such estate, or at

the usual place of abode of such garnishee; and from the time of leaving such copy all the effects of the defendant in the hands of any such garnishee, and any debt due from any such garnishee to the defendant, and and debt, legacy or distributive share, due or that may become due to him from such executor, administrator or trustee in insolvency, not exempt from execution, shall be secured in the hands of such garnishee to pay such judgment as the plaintiff may recover. (1949 Rev., S. 8074; 1961, P.A. 280.)"

SUMMARY OF ARGUMENT

A deputy sheriff who serves a writ of garnishment in connection with civil process under Connecticut law is not a public officer acting under color of state law within the meaning of 42 U.S.C. § 1983. After the commencement of the Toro case in federal district court, the garnishment of Mrs. Toro's checking account was released, thus rendering the case moot.

Property rights, as distinguished from personal liberty rights, are not justiciable under 42 U.S.C. § 1983. The garnishment of a checking account, unlike the prejudgment *ex parte* garnishment of wages or welfare payments, does not rise to the status of a personal liberty right.

The plaintiffs do not constitute a valid civil rights class in that persons with checking accounts subject to garnishment is so large a class that these plaintiffs are not representative nor can they clearly and adequately protect the interests of the class. Futhermore, the interests of such a class are so varied as to be vague, indefinite and impossible to ascertain.

Finally, both cases involve pending civil proceedings before Connecticut civil courts. Under the doctrine of abstention as embodied in 28 U.S.C. § 2283 the injunctive relief sought, to stay the state court proceedings, is prohibited.

ARGUMENT

I.

DEPUTY SHERIFF BARRETT IS NOT A PUBLIC OFFICER ACTING UNDER COLOR OF STATE LAW WITHIN THE MEANING OF 42 UNITED STATES CODE, SECTION 1983.

Under the Connecticut Statutes service of process in civil actions may be made by the sheriff of the county in which the defendant resides, his deputy, a constable or other proper person or by some indifferent person. Section 52-50 Connecticut General Statutes. In practice, service is generally made by the deputy sheriffs of the various counties primarily because they can cover all towns within a county and also because they are more knowledgeable concerning service and the making of attachments and garnishments.

The office of sheriff was in existence in Connecticut prior to the adoption of the State's first Constitution in 1818. For many years sheriffs have acted generally as peace officers. In recent times, however, their duties have been substantially modified. The duties of a sheriff or a deputy sheriff in making service of civil process are enumerated in Title 6 of the Connecticut General Statutes. Section 6-32 requires each sheriff to serve all process directed to him and if he fails to execute and return such process, or makes a false or illegal return thereof, he is personally liable in trespass to the party aggrieved. Section 6-37 concerns deputy sheriffs and delegates to each deputy the same powers as the sheriff and imposes liability on the sheriff for the neglect, wrongdoing, malfeasance, misfeasance and default of his deputies. Section 6-30 requires each sheriff to file a bond payable to the State, conditioned that he will fully discharge the duties of his office and answer all damages which any person may sustain by virtue of his neglect or malfeasance. Section 6-39 requires

each deputy sheriff to file a bond with the sheriff conditioned that each deputy shall faithfully discharge the duties of his office. Section 6-45 provides that appointments of deputy sheriffs shall be in writing under the hand of the sheriff and recorded in the records of the Superior Court in the County for which they are appointed. Such deputy sheriffs serve at the pleasure of the sheriff. Section 6-46 in short provides that if any sheriff is sued on account of the default of his deputy, he may recover on the bond of such deputy the amount which he has been compelled to pay on account of such default. Sheriffs are prohibited from receiving any compensation from any deputy sheriff.

Dayton v. *Lynes*, 30 Conn. 351, 356, holds that deputy sheriffs under our system are independent officers as distinctly recognized by law as the sheriffs themselves. They are not the agents of the sheriffs as was the situation under common law.

> "A deputy sheriff duly appointed and approved now executes all the duties of his office entirely independent of sheriff, and not as his bailiff or servant. Writs may be directed to him alone without naming the sheriff, and by the express provisions of the statute he has the same powers as the sheriff himself. The negligences and defaults of the deputy, therefore, so acting independently of the sheriff, on his own authority derived from the law itself and not from the sheriff, ought not to be considered or treated as the personal torts or defaults of the sheriff; . . ."

Thus in making the service in the civil action of which Mrs. Toro complains; the sheriff was carrying out the routine functions of his office as a person authorized to serve civil process. There is no allegation that the defendant Deputy Sheriff Barrett abused his authority or did not abide by the mandatory directions in the writ, summons and complaint in the

case of *Camposano* v. *Toro* (8th Circuit Court). The deputy sheriff in this instance was not a person acting under color of law but rather should be considered as a private individual for the purposes of 42 U.S.C., Section 1983.

A civil action in Connecticut practice must contain a writ of summons or attachment, describing the parties, the court to which it is returnable, and the time and place of appearance. Every such writ must be signed by a Commissioner of the Superior Court, or Judge or Clerk of the Court to which it is returnable. Section 52-89, Connecticut General Statutes. When signed, the writ is delivered to a proper officer who must make service in accordance with the statutes and as directed by the writ. If he fails to make service or exceeds the authority vested in him by law, then the deputy sheriff or the person making service is personally liable in trespass to any party damaged thereby. After service, the Complaint is returned to Court. The status of the officer making service is analogous to the standing of an attorney who represents the plaintiff in civil proceedings.

> "Under 42 U.S.C. §§1983, 1985, the defendant must have acted under color of State law. For purposes of §§1983, 1985, an attorney is just another private individual. His status as an 'officer of the court' does not make him an officer of the Commonwealth of Pennsylvania or of any governmental subdivision thereof. *Pugliano* v. *Staziak*, 231 F. Supp. 347, 351 n.5 (W.D. Pa. 1964) affirmed, 345 F. 2d 797 (3d Cir. 1965); *Kregger* v. *Posner*, 248 F. Supp. 804, 806 (E.D. Mich. 1966). Leonard Tinter, Esq., apparently was acting in his profession as an attorney at the time complained of, and the action also must be dismissed as to him. The whole complaint is patently frivolous."
>
> *Johnson* v. *Kreider*, 264 F. Supp. 188 (1967)

". . . an attorney's status as an officer of the court does not make him a person who is acting under color of law. He is considered a private individual for purposes of § 1983."

Reinke v. *Richardson*, 279 F. Supp. 155 (1968)

"The instant case was private litigation in which the state did no more than furnish the forum. It had no interest whatever in the outcome. There was no denial of rights under the Fourteenth Amendment or a claim stated upon which relief could be granted under the Federal Civil Rights Acts . . . .

Lawyers who participate in the trial of private state court litigation are not state functionaries acting under color of state law within the meaning of the Federal Civil Rights Acts. *Cooper* v. *Wilson*, 6 Cir., 309 F. 2d 153 (1962); *Swift* v. *Fourth National Bank of Columbus, Georgia*, D.C.M.D. Ga., 205 F. Supp. 563 (1962)."

Skolnick v. *Martin*, 317 F. 2d 855, 857, (1963)

See also *Swift* v. *Fourth National Bank of Columbus, Georgia*, 205 F. Supp. 563 (1962); *Bottone* v. *Lindsley*, 170 F. 2d 705.

As noted previously service of civil process under § 52-50 may, at the discretion of the attorney issuing the writ, summons and complaint, be directed to either a sheriff, a deputy sheriff, a constable or other proper person or some indifferent person. In the garnishment action of which the plaintiff complains service was directed to the sheriff of the County of New Haven, his deputy or city sheriff or the constable of the Town of East Haven. The funds in the custody of the defendant Hamden National Bank were reached by foreign attachment, generally called garnishment, and resulted in

requiring the bank to hold such funds in its custody pending disposition of the civil action. This defendant has not thereby deprived the plaintiff of her liberty or property without due process of law.

In this case the plaintiff's Complaint is inadequate with respect to the defendant, Sheriff Barrett, in that it fails to allege that he deprived the plaintiff of her constitutional rights while acting under color of state law. The only allegation in the Complaint is the conclusory pleading that Attorney Lacobelle was acting under color of law (Appendix p. 35, par. 14.) This allegation is unsupported by any facts showing a deprivation of constitutional rights. *Cohen* v. *Norris*, 300 F. 2d 24, 30 (1962). Plaintiff's failure to allege acts of misconduct on the part of the defendants is fatal. It has been repeatedly held that the phrase "under color of state law" contemplates only the misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.

II.

THE TORO CASE IS MOOT BECAUSE OF THE RELEASE OF THE GARNISHMENT.

Attorney Jerome A. Lacobelle released the attachment of Mrs. Toro's checking account on March 31, 1970. It is recognized that where one or more of the issues in a suit becomes moot prior to or during the action, the Court should not adjudicate them. 6A Moore's Federal Practice ¶ 57.13 at 3072. Thus in an action for a declaratory judgment that a patent was void, where the patent was sold prior to trial and defendant no longer owned it, the case was held moot. *National Hairdressers' and Cosmetologists' Assn., Inc.* v. *Philad Co.* (D. Del. 1944) 4 FRD 106.

An issue becomes moot and hence no longer justiciable when as a result of intervening circumstances there are no longer adverse parties with sufficient legal interests to maintain the litigation. 6A Moore's Federal Practice 57.13 at 3074. This principle was illustrated in *Miller* v. *Udall*, 368 F. 2d 548 (C.A. 10, 1966). The Court held that a challenge to the Secretary of Interior's refusal to lease certain property in Utah became moot when a United States District Court ruled that the land in question was owned by the State of Utah, not the federal government.

Similarly, a suit for declaratory judgment and an injunction to permit distribution of campaign literature on a public sidewalk for a candidate for the Democratic Presidential nomination was held moot once the nominating convention had been held. *Seidel* v. *Cahn*, 288 F. Supp. 990 (E. D. N.Y. 1968).

In another case a claim for an injunction against alleged actual and threatened interference with a proposed rally necessarily became moot after the date of the proposed rally came and went. *Fowler* v. *United States*, 258 F. Supp. 638 (C. D. Cal. 1966). In that situation, the proposed rally date was after suit had been brought but fell before the final decision.

It has been held that a suit for improper administration of a state poll tax became moot when a new state statute made the poll tax unnecessary for voting. *Munoz* v. *Amador*, 340 F. 2d 590, (U.S.C.A. 5, 1965). Where a declaratory judgment had been rendered on a collective bargaining agreement, but the agreement had expired prior to appeal, the case became moot and had to be dismissed accordingly. There was no longer an "actual controversy", a prerequisite under the Declaratory Judgment Act. 28 U.S.C. § 2201. *General Electric Co.* v. *Local* 761, (C.A. 6, 1968). 395 F. 2d 891.

Other instances of mootness are numerous. When a challenged AFDC welfare regulation is no longer applied, injunctive relief must be denied. *Robinson* v. *Washington*, 302 F. Supp. 842, (Dist. Col. 1968). Where cruel and unusual treatment of prisoners has ceased and it does not appear that it will be resumed, injunctive relief is also inappropriate. *Knuckles* v. *Prasse*, 302 F. Supp. 1036 (E.D. Pa. 1969). Where a claimant for conscientious objector status was so classified by the time of judicial decision though after suit had commenced, his action was also moot. *United States* v. *Reynolds*, 300 F. Supp. 503 (N.D. Cal. 1968). Similarly, the United States District Court of Connecticut has ruled that repeal of an allegedly unconstitutional statute renders that issue moot. *Sessions* v. *State of Connecticut*, 293 F. Supp. 834. (1968).

Accordingly, the release of the garnishment in this case makes the present suit moot in that there no longer is an actual controversy within the meaning of the Declaratory Judgment Act.

III.

PROPERTY RIGHTS ARE NOT JUSTICIABLE UNDER 42 UNITED STATES CODE, SECTION 1983.

Title 28 U.S.C. § 1331 (a) vests civil jurisdiction over federal questions in the district courts only where the matter in controversy exceeds $10,000.00. Section 1343 (3) and (4) of the Code, however, eliminates the requirement of a jurisdictional amount in certain actions brought under the Civil Rights statute, 42 U.S.C.A. § 1983. Nevertheless, where only property rights are involved, Section 1331 (a) would be rendered virtually meaningless if its jurisdictional amount requirement could be evaded by coloring the complaint as a Civil Rights one with purported jurisdiction under § 1343.

This jurisdictional conflict was reconciled by Mr. Justice Stone, concurring in *Hague* v. *Committee for Industrial Organization*, 307 U.S. 496 (1939), as follows:

> "By treating [§ 1343] as conferring federal jurisdiction of suits brought under the Act of 1871 in which the *right asserted is inherently incapable of pecuniary valuation* we harmonize the two parallel provisions of the Judicial Code, construe neither as superfluous, and give to each a scope in conformity with its history and manifest purpose." 307 U.S. at 530. (Emphasis supplied.)

Justice Stone distinguished between *Holt* v. *Indiana Mfg. Co.*, 176 U.S. 68 (1900) where a patent right was held not a "civil right" under § 1343's predecessor, and other decisions where ". . . the gist of the cause of action was not damage or injury to property, but unconstitutional infringement of a right of personal liberty not susceptible of valuation in money". 307 U.S. at 531. He concluded, ". . . whenever the right or immunity is one of personal liberty, not dependent for its existence upon the infringement of property rights, there is jurisdiction in the district court" regardless of amount of claim. *Id.* (Emphasis supplied.)

Justice Stone's opinion was recently followed in *Eisen* v. *Eastman*, 421 F. 2d 560 (C.A. 2, 1969) where a landlord challenged the constitutionality of rent control legislation and the propriety of rent reductions under that law. The Court stated:

> ". . . there seems to be something right about it, especially if one accepts, as we do, his premise that the overlap between 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3) should be explained in some rational way. It has the merit of preserving not only the kind of case that was at the core of Congressional concern in 1871 but a good many others that Congress would probably desire to have

within the statute, while at the same time excluding cases that neither the Reconstruction Congress nor later Congresses could really have had in mind." 421 F. 2d 565-566.

Ruling that the complaint involved only property rights and not personal liberty, the Court found no jurisdiction for those claims under $10,000.00. The cases following Justice Stone's interpretation were referred to in *Eisen*, and this Supreme Court has either affirmed or denied certiorari where these decisions were appealed. See, e.g., *Reiling* v. *Lacey*, 93 F. Supp. 462 (D. Md. 1950), app. dism. 341 U.S. 901 (1951); *Abernathy* v. *Carpenter*, 208 F. Supp. 793 (W.D. Mo. 1962) [alternative ground], aff'd, 373 U.S. 241 (1963); *Gray* v. *Morgan*, 371 F. 2d 172 (C.A. 7, 1966), cert. den. 386 U.S. 1033 (1967); *Hornbeak* v. *Hamm*, 283 F. Supp. 549 (M.D. Ala.), aff'd, 393 U.S. 9 (1968). It is also noteworthy that one of the cases cited in *Eisen* as a non-civil rights action was *Howard* v. *Higgins*, 379 F. 2d 227 (C.A. 10, 1967), where it was alleged that a sheriff had unconstitutionally deprived someone in his custody of personal property.

Justice Stone's opinion in *Eisen* must be reconciled with *King* v. *Smith*, 392 U.S. 309 (1968) which held illegal the substitute parent rule in Welfare aid. A close examination of *King* and subsequent welfare cases indicates that this Supreme Court has been quite aware of the property rights — personal liberty distinction and in fact has closely adhered to it. *King* involved both constitutional and statutory claims seeking relief under § 1983. The Court found the State AFDC statutes inconsistent with the Social Security Act and thus did not reach the constitutional issue. In so doing it noted:

"We intimate no views as to whether and under what circumstances suits challenging AFDC provisions only on the ground that they are inconsistent with the federal statute may be brought in federal courts. See generally

Note, Federal Judicial Review of State Welfare Practices, 67 Col. L. Rev. 84 (1967)." 392 U.S. at 314, n. 3.

The Law Review note cited stated that "Jurisdiction of the federal district court (in Welfare appeals) over such a cause of action (based on due process) would clearly exist under § 1343(3) of the Judicial Code, *and there would be no need to establish that the amount in controversy exceeds* $10,000.00." *Id.* at 96-97. (Emphasis supplied.) Thus the court was aware of the problem of jurisdictional amount. The authority cited by the Law Review for this proposition, moreover, was *Douglas* v. *Jeanette*, 319 U.S. 157 (1943). That decision held illegal a requirement of a license and tax for distribution of merchandise orders as applied to literature on the teachings of the Jehovah Witnesses. It is significant that the *Douglas* Court then stated:

> "As we held in *Hague* v. *CIO*, 307 U.S. 496, 507-514, 527-532, 59 S. Ct. 954, 960-963, 969-971, 83 L. Ed. 1423, the district courts of the United States are given jurisdiction by 28 U.S.C. § 41 (14), 28 U.S.C.A. § 41 (14), over suits brought under Civil Rights Act without the allegation or proof of any jurisdictional amount." 319 U.S. at 161.

The Court in *King* v. *Smith*, therefore, by basing its jurisdiction on *Douglas*, however indirectly, clearly recognized the property rights — personal liberty distinction. It found that essentially only the latter was involved. The Court went to great lengths to demonstrate that the Alabama statute thwarted the policy of federal legislation to ascertain the true father of the child. The goal of the federal welfare system was to provide further "meaningful economic security for that [fatherless] child." 392 U.S. at 330. The Court recognized that "the enormity and pervasiveness of social ills caused by proverty" would be exacerbated by the substitute parent rule. 392 U.S. at 334. (Emphasis supplied.)

This point was amplified in a subsequent Welfare case, *Goldberg* v. *Kelly*, 397 U.S. 254 (1970). There the Court stated:

> "Relevant constitutional restraints apply as much to the withdrawal of public assistance benefits as disqualification for unemployment compensation, denial of a tax exemption, or to discharge from public employment."

Id. at 262.

By adopting the entitlement approach, the Court thus elevated aid for dependent children above mere monetary value. This aid was found essential for a healthy and decent environment and an otherwise socially sound upbringing which all children require. The entitlement approach is thus analogous to the liberty to pursue one's chosen career as recognized in *Eisen* v. *Eastman at* 421 F. 2d 565. The personal liberty basis of such jurisdiction was again alluded to in a subsequent Welfare case, *Rosado* v. *Wyman*, 397 U.S. 397, (1970).

Here we are dealing with only a property right, namely, a checking account. Coloring this claim as an equal protection one, as plaintiff has attempted, does not alter this fact; otherwise we would elevate form over substance. *Alterman Transp. Lines, Inc.* v. *Pub. Serv. Comm'n. of Tenn.*, 259 F. Supp. 486, 492 (M.D. Tenn. 1966) (3 judge court), aff'd per curiam, 386 U.S. 262 (1967).

Nor does the fact that plaintiff may be or has been on Welfare as intimated in her affidavit (dated March 16, 1970, ¶¶ 5 and 9) make any difference. In addition, there is a serious question as to whether plaintiff is eligible for welfare in the first place. Section 17-2, Connecticut General Statutes, Revision of 1958, Revised to 1969, sets the maximum earned income for welfare recipients at $266.67 per month for a

family of two. In her complaint Mrs. Toro claims she earns $85.00 a week, or about $340.00 per month. Even deductions for taxes, social security and average insurance contributions could hardly account for the difference between her alleged pay and welfare eligibility limits.

It is important to note here, that the garnishment in this case is not against Mrs. Toro's wages, nor her welfare payments. It is not her wages or welfare payments which are frozen, but rather the sum of $103.99 which was on deposit in her checking account. These facts distinguish this case from *Sniadach* v. *Family Finance Corporation of Bay View*, 395 U.S. 337 (1969).

In *Sniadach a* garnishment was made of a debtor's wages prior to judgment. The Wisconsin statute made no provision for notice and hearing and therefore violated fundamental principles of due process. Mr. Justice Douglas speaking for the Court stated: "We deal here with wages — a specialized type of property presenting distinct problems in our economic system." *Id.* at 340. After a discussion of the dependence of the wage earner on his earnings for the necessities of life for his family, the Court noted that:

> "... it appears that in Wisconsin the statutory exemption granted the wage earner is 'generally insufficient to support the debtor for any one week.'
>
> "The result is that a prejudgment garnishment of the Wisconsin type may as a practical matter drive a wage-earning family to the wall."
>
> *Id.* at 341 and 342.

The limited applicability of *Sniadach* to wage garnishment was clearly recognized by a unanimous three-judge federal court in *Balthazar* v. *Mari Ltd.*, 301 F. Supp. 103

(E.D. Ill. 1969). The Court upheld Illinois statutes authorizing realty tax deeds. The sale was for recovery of delinquent taxes and did not need a court judgment, although objections could be filed. The Court ruled that *Sniadach* was not controlling, stating:

> "The Supreme Court's recent garnishment decision, *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L. Ed. 2nd 349, is inapplicable. 'We deal here with wages — a specialized type of property presenting distinct problems in our economic system.'" 301 F. Supp. at 105, n. 5.

In this instant case, the Three-Judge District Court recognized the limitations of the *Sniadach* decision (See: Appendix p. 23, n. 3) and followed the *Eisen* case, *supra*, in its opinion.

> ". . . We hold that the decision of the Court of Appeals for this Circuit in *Eisen* v. *Eastman*, 421 F. 2d 560 (2 Cir. 1969), is dispositive of the threshold jurisdictional issue presented in both actions before us, namely, whether the rights here asserted, not being one of personal liberty but dependent for their existence upon the infringement of property rights, are outside the protection of 28 U.S.C. § 1343 (3) 1964. 421 F. 2d at 564 and 566. We hold they are.
>
> . . . .
>
> Interference with a Connecticut resident's right to the uninterrupted use of her bank account, like the interdiction of a New Yorker's right to rely upon an undiminished amount of rental income from his property, has to do almost entirely with the loss of money; it involves, at most, only an incidental deprivation of personal rights in the sense of 'personal liberty, not de-

pendent for its existence upon the infringement of property rights.' *Hague* v. *CIO*, 307 U.S. 496, 531 (1939); *Eisen* v. *Eastman*, *supra*, at 565."

(Appendix pp. 24 and 25)

IV.

PLAINTIFFS DO NOT CONSTITUTE A VALID CIVIL RIGHTS ACT CLASS.

In paragraph 5 of the Complaint the class allegedly represented by the Appellant, Mrs. Toro, encompasses "those residents of the State of Connecticut who have been and will be in the future, subjected to and are threatened with prejudgment attachment and garnishment as authorized by Sections 52-279, 52-280, 52-329, 52-304 of the Connecticut General Statutes. The members of the class on behalf of whom this action is brought are similarly affected by the statutes complained of herein and are so numerous as to make it impracticable to bring each one of them individually before this Court." The class as thus described may be said to represent practically every resident of the State of Connecticut including corporations, partnerships, associations and others. Insofar as the allegations of the Complaint are concerned, it does not appear that the Appellant-Plaintiff has been subjected to attachment proceedings under § 52-279 and § 52-280, Conn. Gen. Stat. Moreover, the class described is large and it is impossible for the plaintiff to declare that she will clearly and adequately protect the interests of the class. It is impossible to have common questions of law and fact affect all persons subject to attachment as well as all persons who are subject to garnishment under § 52-329, Conn. Gen. Stat. *Chaffee* v. *Johnson*, 229 F. Supp. 445, 448 (1964); *D & A Motors* v. *General Motors Corporation*, 19 F.R.D. 365, 367 (1956).

As stated previously this plaintiff does not complain of being threatened by direct attachment proceedings under §§ 52-279 and 52-280, Conn. Gen. Stat.

> "It is fundamental that an individual suing in behalf of the members of a class must be a member of the class which he proposes to represent. 2 Barron & Holtzoff Federal Practice and Procedure (Wright Ed. 1961) § 567, p. 308."

> "Plaintiff is not a proper representative of the class he purports to represent, and the class action aspects of this suit must fail."

Putt v. *Clark*, 285 F. Supp. 534, 535 (1967).

In paragraph 6 of Mrs. Toro's Complaint it is alleged that Deputy Sheriff Barrett represents the sheriffs, deputy sheriffs and constables of the State of Connecticut who are authorized to serve writs of attachment and garnishment. The defendant Barrett is not an elected sheriff and not being a member of the class, he is not a proper representative of such class. Furthermore, he is not a constable and for the same reason cannot purport to represent those persons elected constables in the municipalities in which they reside. *Putt* v. *Clark, Ibid.*

Furthermore, it does not appear of record that either the class allegedly represented by the plaintiff or the class represented by the defendant Barrett have received any notice in order that they might have the opportunity to present their objections. Notice under Rule 23 is an integral part of due process in a class action and under the circumstances as presented in this case they must be made aware of the pendency of the action in order to determine whether they wish to be included or excluded from the action.

V.

STAY OF STATE COURT PROCEEDINGS PROHIBITED BY 28 U.S.C. § 2283.

Title 28 U.S.C., § 2283, provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Almost from the beginning of our judicial history Congress has restricted the grant of injunctions by federal courts to stay state court proceedings. Act of March 2, 1793, C. 22, 1 Stat. 333, 334. This provision, based on comity, is designed to promote harmony in our system of dual federalism.

> "The Act of 1793 expresses the desire of Congress to avoid friction between the federal government and the state resulting from the intrusion of federal authority into the orderly functioning of a state's judicial process."
>
> *Toucey* v. *New York Life Ins. Co.*, 314 U.S. 118, 132 (1941) (Frankfurter, J.)

Consonant with this purpose, the term "proceedings" is a broad one.

> "That term [proceedings] is comprehensive. *It includes all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process.* . . . It applies alike to action by the court and by its ministerial officers; applies not only to an execution issued on a judgment effective. . . . Thus the prohibition applies whatever the nature of the proceedings, unless the case presents facts which

bring it within one of the recognized exceptions to section [2283]." (Emphasis supplied.)

Hill v. *Martin*, 296 U.S. 393, 403 (1935).

In accordance with this rule, prejudgment garnishment of wages has been recognized as "proceedings" within the meaning of 28 U.S.C. 2283 and thus prohibited unless allowed by one of the statute's exceptions. *National Labor Relations Bd.* v. *Underwood Mach. Co.*, 198 F. 2d 93 (C.A. 5, 1952). Although the Court in that case found that one of those exceptions applied but in its discretion declined to intervene, it clearly premised its opinion on the fact that the garnishment was a state court proceeding.

This question was precisely faced recently in *Javelin Oil Co.* v. *T. C. Morrow Drilling Co.*, 266 F. Supp. 119 (E.D. La. 1967). There, a suit was filed in state court and a prejudgement lien for labor and material acted on by the sheriff pursuant to the suit. Six days later defendant sought a federal injunction to void the lien. The Court ruled that § 2283 applied and that the injunction could not be granted.

The Court also recognized the general rule that the jurisdiction of a court, state or federal, having in rem or quasi in rem control or disposition of specific property, cannot be interfered with by injunction of another forum. See also 1A Moore's Federal Practice (2d ed.) § 0.221 at 2605.

"Where a court of competent jurisdiotion has, by appropriate proceedings, taken property into its possession through its officers, the property thereby is withdrawn from the jurisdiction of all other courts."

Lion Bonding and Surety Co. v. *Karate*, 262 U.S. 77, 88, (1923); See also 1A Moore's Federal Practice (2d ed.) § 0.215 at 2508.

The prohibition in § 2283 against federal injunctions, moreover, cannot be avoided by labelling the restraint as against a party rather than directly against the court, itself. *Oklahoma Packing Co.* v. *Oklahoma Gas and Electric Co.*, 309 U.S. 4 (1940); *Hill* v. *Martin, supra; Javelin Oil Co.* v. *T. C. Morrow Drilling Co., supra* (attaching creditor in state suit not enjoinable by federal court).

It is also clear that under § 2283 injunctive relief cannot be obtained merely by seeking both declaratory and injunctive remedies, as in this case. *H. J. Heinz Co.* v. *Owens*, (C.A. 9, 1951) 189 F. 2d 505, reh. den. 191 F. 2d 257, cert. den. 342 U.S. 905 (1952); 1A Moore's Federal Practice (2d ed.) § 0.220 at 2604.

Finally, the present suit does not fall under the exception in § 2283 for actions "expressly authorized by Act of Congress". As previously indicated, the statutory provisions for declaratory judgments themselves create no such exception. *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U.S. 270 (1941).

It is also well recognized that the "color of law" statute under which plaintiff seeks relief, 42 U.S.C. § 1983, is not an exception to 28 U.S.C. § 2283.

> "The weight of authority and the better reasoned approach require a decision that Sec. 2283 prohibits the enjoining of these state proceedings and that Sec. 1983 is not an 'expressly authorized' exception to Sec. 2283. To hold otherwise would be to create a vast exception to Sec. 2283 and would do violence to the principles of comity and federalism which underlie it. Throughout our history the statute and its predecessors have played an important role in our federal system in curtailing 'needless friction between state and federal courts.' *Oklahoma*

Packing Co. v. *Oklahoma Gas & Electric Co.*, 309 U.S. 4, 9, 60 S. Ct. 215, 218, 84 L. Ed. 447 (1940)."

Brooks v. *Briley*, 274 F. Supp. 538, aff'd 391 U.S. 371 (1968).

The fact that the garnishment has been released does not legitimize injunctive relief. A state proceeding is still under way in this case. We submit that the cases of *Younger* v. *Harris, Jr., et al*, 91 S. Ct. 746 (1971), *Boyle* v. *Landry*, 91 S. Ct. 758 (1971), and *Perez Jr., et al* v. *Ledesma, et al*, 91 S. Ct. 674 (1971) are controlling.

CONCLUSION

The basis of the three-judge District Court decision dismissing the Appellant-Plaintiff's Complaint was twofold. First, that the rights asserted by the plaintiff under 42 U.S.C. § 1983 (3) were property rights as opposed to personal liberty rights, and therefore outside the protection of said statute. Secondly, that the anti-injunction statute, 28 U.S.C. § 2283 applies here. As the District Court noted in its opinion, there is no plaintiff in this case "as to whom the issue is not either purely monetary, moot, or already on the way to adjudication in an adequate state form." (Appendix p. 27.)

This appeal should be dismissed and the decision of the three-judge District Court below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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In the

Supreme Court of the United States

OCTOBER TERM, 1970

70-5058

No. ~~6350~~

DOROTHY LYNCH, ET AL.,
Appellants,

vs.

HOUSEHOLD FINANCE CORPORATION, ET AL.,
Appellees.

On Appeal from the United States District Court
for the District of Connecticut

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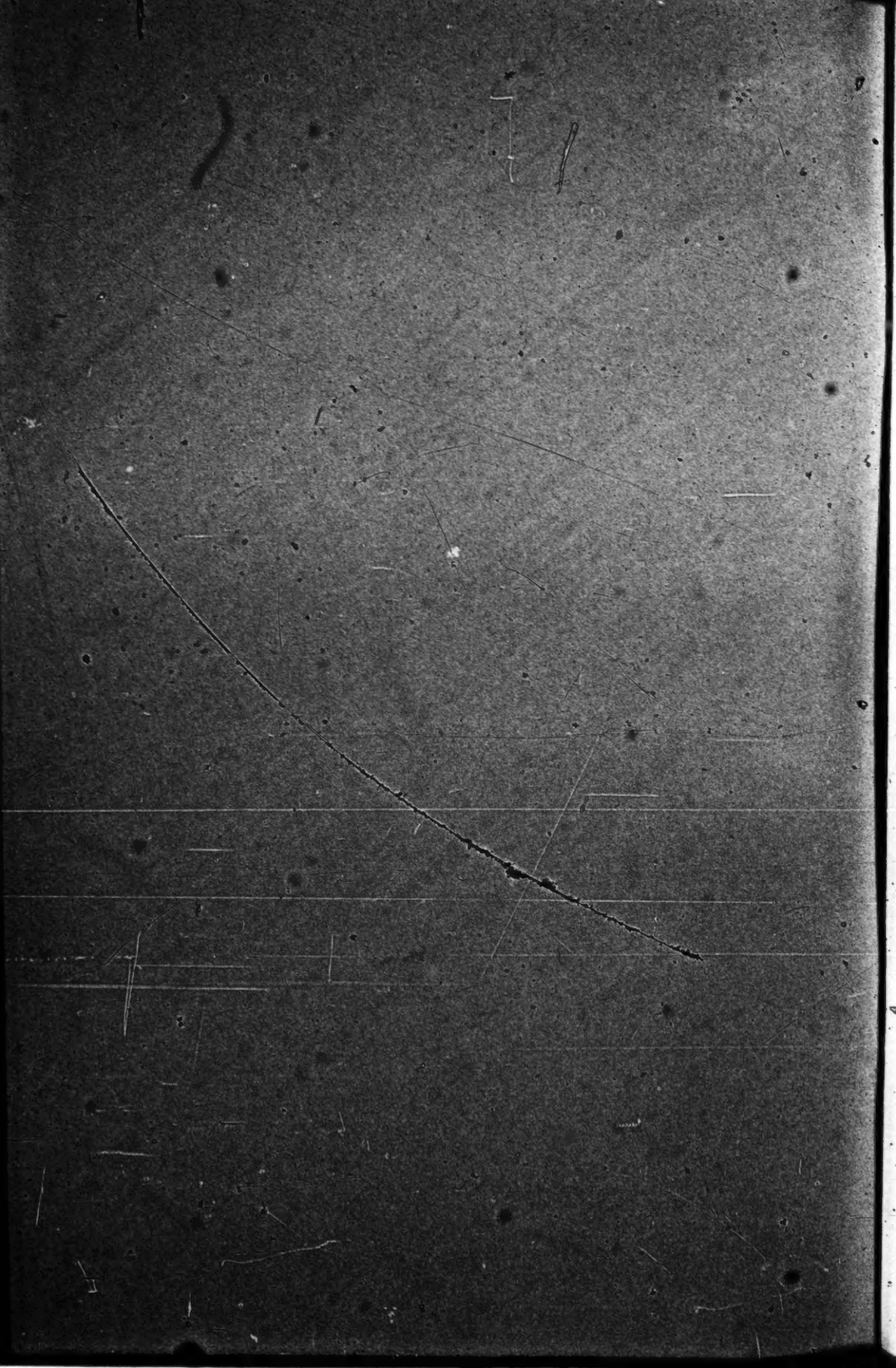


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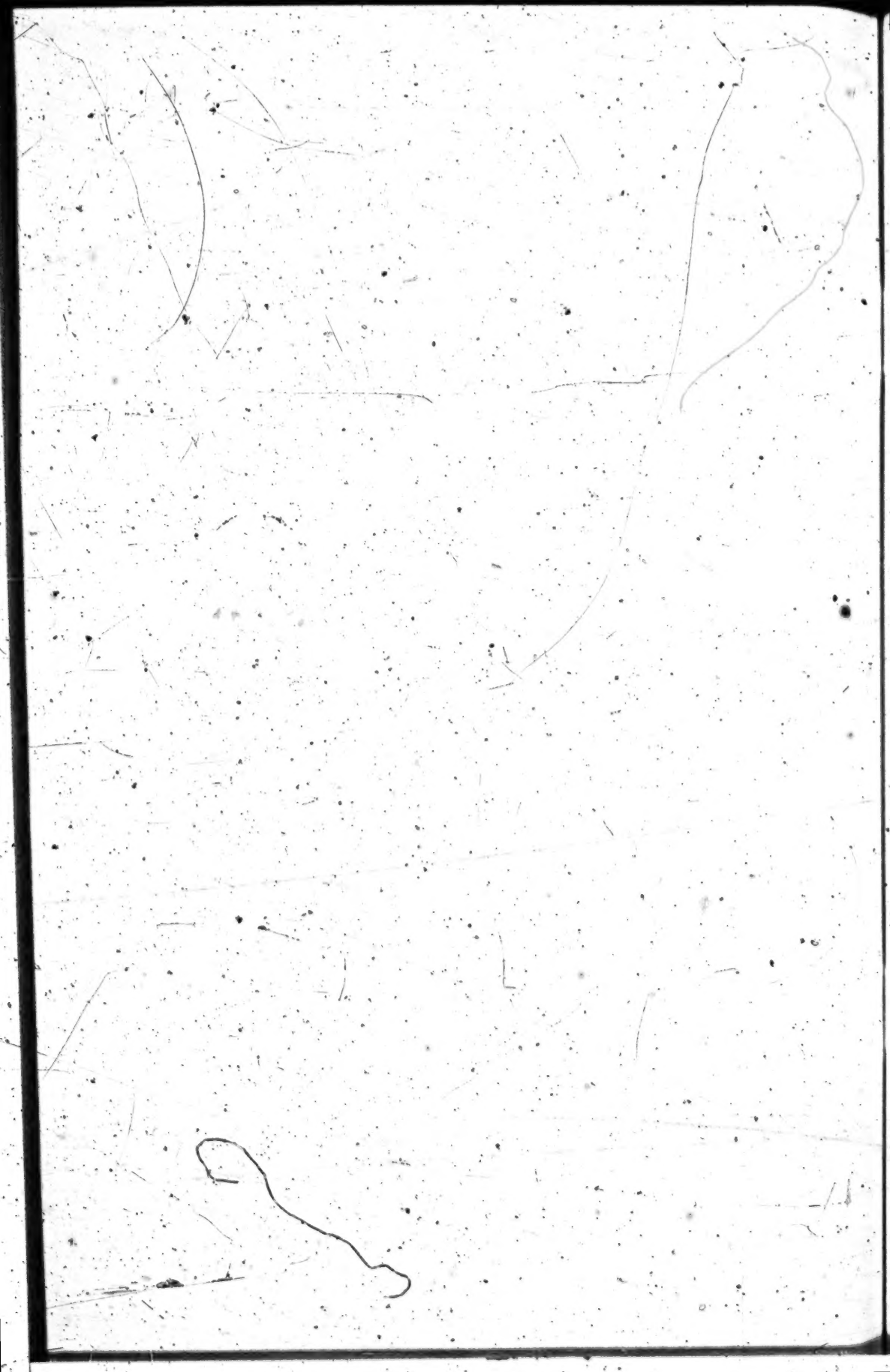
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In the

Supreme Court of the United States

OCTOBER TERM, 1970

No. 6356

DOROTHY LYNCH, ET AL.,
Appellants,

vs.

HOUSEHOLD FINANCE CORPORATION, ET AL.,
Appellees.

On Appeal from the United States District Court
for the District of Connecticut

BRIEF FOR APPELLEES

JURISDICTION

Appellants' statement of jurisdiction (Brief for Appellants, p. 2) is a correct statement of the respective jurisdictional grounds sought to be invoked. Appellees, as set forth herein, do not agree that the court below had jurisdiction under 28 U.S.C. § 1343 (3) nor that this Court has jurisdiction under 28 U.S.C. § 1253.

STATUTES INVOLVED

In addition to those statutes noted in the Brief for Appellants, the following is applicable to this case:

Title 28, United States Code, § 1253 provides:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

STATEMENT OF THE CASE

On June 23, 1969, Household Finance Corporation, a Delaware corporation doing business in Connecticut (A. 7), through its attorney, David W. Goldman, commenced legal proceedings against Dorothy Lynch of New Haven, Connecticut, seeking damages of $525 on her past due note (A. 8, 22). The first step in these proceedings was service on that date by Deputy Sheriff Jack Friedler, an officer authorized to effect service, Conn. Gen. Stat. § 52-50, upon The Hospital of St. Raphael's Employees Credit Union, Inc., a credit union maintained by Mrs. Lynch's employer, The Hospital of St. Raphael in New Haven, Connecticut, (A. 8). Thereafter, Friedler effected service upon Mrs. Lynch on June 26, 1969 and returned the original writ to the Sixth Circuit Court in New Haven, Connecticut on July 1, 1969 (A. 8; Brief for Appellants, p. 6 n. 2). Service in this manner upon the Credit Union constituted a "garnishment" under Connecticut law, Conn. Gen. Stat. § 52-329. At the time of the garnishment, the Credit Union held a savings account of Mrs. Lynch in the amount of $494.83 (A. 8.) The effect of the garnishment of

the Credit Union was that from the date of service upon it, this amount was ". . . secured in the hands of such garnishee to pay such judgment as the plaintiff [Household Finance Corporation] may recover", Conn. Gen. Stat. § 52-329.

Subsequently, on March 4, 1970, during the pendency of the action in the Sixth Circuit Court, Dorothy Lynch, acting on behalf of herself and all other persons similarly situated (A. 5), brought this action in the United States District Court for the District of Connecticut against the Credit Union, Household Finance Corporation, Goldman, and Friedler, and, in Friedler's case, against him individually and as a representative of all the sheriffs, deputy sheriffs, and constables of the State of Connecticut. The Appellants sought the convening of a three-judge district court, 28 U.S.C. §§ 2281, 2284, to enjoin the defendants from applying and enforcing the Connecticut garnishment statute, Conn. Gen. Stat. § 52-329[1], and to declare the same to be unconstitutional as violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution (A. 5, 6). Jurisdiction was invoked pursuant to the Civil Rights Act, 28 U.S.C. § 1343 (3).

The essence of the complaint is that the Credit Union savings account constitutes an accumulation of savings from Mrs. Lynch's prior wages; she has need of such savings from time to time to defray her living expenses; the garnishment effected

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[1] The Complaint also attacked other Connecticut statutes, Conn. Gen. Stats. §§ 52-279, 52-280, 52-304, (A. 6). The Brief for Appellants (p. 4 n. 1) has recognized that the only process involved here is the garnishment process under Conn. Gen. Stat. § 52-329, and the claim with respect to the other statutes has been abandoned.

a deprivation of these savings to her hardship; the effecting of such a garnishment without prior notice or hearing is a deprivation of property without due process of law, and denies her and others of her class the equal protection of the laws by discriminating against debtors and the poor (A. 8, 9).

The court below, without hearing, dismissed the action on the appellees' motion for want of jurisdiction under 28 U.S.C. § 1343 (3) and, alternatively, because the action was barred by the anti-injunction statute, 28 U.S.C. § 2283. From that dismissal, the plaintiffs have appealed to this Court.

SUMMARY OF ARGUMENT

At the outset, this Court faces a question of its subject matter jurisdiction. The appellants purport to take this direct appeal pursuant to 28 U.S.C. § 1253 which permits such an appeal:

> ". . . from an order granting or denying, after *notice and hearing*, an interlocutory or permanent injunction in any civil action, suit or proceeding *required by any Act of Congress to be heard* and determined by a district court of three judges." (Emphasis added)

As emphasized throughout the Brief for Appellants (pp. 1, 6, 9, 12, 40, 42) there was no hearing below on the merits of the issue as contemplated by the statute; the complaint was dismissed on the alternative grounds of lack of jurisdiction under 28 U.S.C. § 1343(3) and the proscription of the anti-injunction statute, 28 U.S.C. § 2283 (A. 25, 26). Further, the ascertaining of a jurisdictional bar to acceptance of the action by the three-judge court is not itself a proceeding required to be heard by a three-judge court, *California Water Service Co.* vs. *Redding*, 304 U.S. 252, 254 (1938). Thus, the

clear holdings of such cases as *Mengelkoch* vs. *Industrial Welfare Com.*, 393 U.S. 83, 84 (1968), direct appellants to appeal to the United States Court of Appeals for the Second Circuit, and the instant appeal should be dismissed.

The substance of appellees' argument in chief rests on the alternative grounds of the dismissal below. First of all, the three-judge district court properly held that neither this case nor its companion, *Toro* vs. *Camposano*, were within its jurisdiction since they involved at most, a "loss of money" and not a "personal liberty" protected by the Civil Rights Act, 28 U.S.C. § 1343 (3), (A. 24). This distinction between primarily property-right interests and those personal liberties not dependent on a property interest for their existence finds clear articulation in Mr. Justice Stone's concurring opinion in *Hague* vs. *CIO*, 307 U.S. 496, 531 (1939), which both explained the rationale of the parallel development of 28 U.S.C. § 1343 (3) and 28 U.S.C. § 1331, previously implicit in such cases as *Holt* vs. *Indiana Mfg. Co.*, 176 U.S. 68 (1900), and foreshadowed its development through *Eisen* vs. *Eastman*, 421 F.2d 560 (2 Cir. 1969). The garnishment effected here of the savings account is essentially a matter of placing a lien on that account, *Coffin Bros. & Co.* vs. *Bennett*, 277 U.S. 29, 31 (1928), and as such, ". . . involves at most an incidental deprivation of personal rights in the sense of personal liberty, not dependent for its existence upon the infringement of property rights." (A. 24). Since Section 1343 (3) jurisdiction involves precisely such a personal liberty, *Goldberg* vs. *Kelly*, 397 U.S. 254 (1970), *King* vs. *Smith*, 392 U.S. 309 (1968), lacking here, *Coffin Bros. & Co.* vs. *Bennett, supra*, *McKay* vs. *McInnes*, 279 U.S. 820 (1929), the court below properly dismissed the action. *Eisen* vs. *Eastman, supra.*

In the alternative, the anti-injunction statute, 28 U.S.C. § 2283, bars this action. The historical thrust of the statute, although cast in terms of a proscription against an "injunction", applies with equal vigor to a declaratory judgment, *Great Lakes Dredge & Dock Co.* vs. *Huffman*, 319 U.S. 293, 299 (1943). The statute is addressed to "proceedings" in a state court, a term which, when examined in the light of its historical purposes, *Toucey* vs. *New York Life Insurance Co.*, 314 U.S. 118, 129 (1941), is a concept ranging far beyond the strict joinder of issues at bar to embrace all phases of a law suit including those ". . . supplemental or ancillary taken with a view to making the suit or judgment effective", *Hill* vs. *Martin*, 296 U.S. 393, 403 (1935). This is precisely the purpose of the Connecticut garnishment statute, *Coffin Bros. & Co.* vs. *Bennett, supra*, 277 U.S. at 31; *Sachs* vs. *Nussenbaum*, 92 Conn. 682, 689, 104 Atl. 393, 395 (1918); and intervention by the Federal District Court into the pending state procedure was, without assessing the propriety of discretionary abstention, *Younger* vs. *Harris*, 39 L.W. 4201, 4206 (1971), prohibited by 28 U.S.C. § 2283. *Atlantic Coast Line R. Co.* vs. *Engineers*, 398 U.S. 281, 287 (1970).

Nor is 42 U.S.C. § 1983 an exception to 28 U.S.C. § 2283. All of the remedies sought by the appellant can be pursued in the Connecticut courts, as was the case in Wisconsin in *Sniadach* vs. *Family Finance Corp.*, 395 U.S. 337 (1969). Furthermore, the very terms of the statute require an express authorization for what would otherwise be a significant historical departure, *Toucey* vs. *New York Life Ins. Co., supra*, and considering the strict construction to be given to Section 2283, *Amalgamated Clothing Workers of America* vs. *Richman Bros.*, 348 U.S. 511, 516, (1955), such authorization is lacking. *Atlanta Coast Line R. Co.* vs. *Engineers, supra.*

ARGUMENT

I. This Court Lacks Jurisdiction To Consider This Case On Direct Appeal

Appellants have appealed the district court's dismissals of their respective complaints directly to this Court pursuant to 28 U.S.C. § 1253. There is no question such a direct appeal would be proper if the three-judge district court had considered appellants' claims on the merits and then decided to deny the requested injunction. See *Boddie* vs. *Connecticut*, 39 L.W. 4294 (1971). But that is not what happened. Instead the district court ruled it lacked subject-matter jurisdiction even to consider the merits and, therefore, dismissed the complaints on that ground (A. 24). Under these circumstances, therefore, appellees now contend Section 1253 does not authorize a direct appeal.[2]

Underlying this contention is the basic principle that direct appeals to this Court are available only from decisions required to be determined by a panel of three judges. 28 U.S.C. § 1253. This Court has repeatedly held that, when a three-judge court dissolves itself and the action is dismissed for want of jurisdiction, no direct appeal is available under Section 1253. *Mengelkoch* vs. *Industrial Welfare Com.*, 393 U.S. 83, 84 (1968); *Wilson* vs. *City of Port Lavaca*, 391 U.S. 352 (1968). See *Idlewild Bon Voyage Liquor Corp.* vs. *Rohan*, 289 F.2d 426, 428-29 (2 Cir. 1961), *remanded sub nom.*

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[2] The question was not raised in appellees' motion to dismiss or affirm. However, see *Flast* vs. *Cohen*, 392 U.S. 83, 88 n. 2 (1968).

Idlewild Bon Voyage Liquor Corp. vs. *Epstein*, 370 U.S. 713 (1962). The instant case differs from the *Mengelkoch* and *Wilson* situations only in that here the three-judge court itself entered the order of dismissal rather than simply dissolving itself and permitting the single, convening judge to enter the final order.

But whether a single judge or three judges ordered dismissal does not matter. What counts is whether the order of dismissal *required* the participation of three judges. *Perez* vs. *Ledesma*, 39 L.W. 4214, 4215 (1971). Appellees contend it did not. In the first place, the cases have repeatedly held that, when a complaint, requesting convocation of a three-judge court, is first submitted to a single judge, that judge has the power and the responsibility to determine whether federal jurisdiction exists. *California Water Service Co.* vs. *Redding*, 304 U.S. 252, 254 (1938). See *Idlewild Bon Voyage Liquor Corp.* vs. *Epstein*, *supra*; *Ex Parte Poresky*, 290 U.S. 30 (1933); *German* vs. *South Carolina Ports Authority*, 295 F.2d 491 (4 Cir. 1961); *Shackman* vs. *Arnebergh*, 258 F. Supp. 983 (C.D. Cal. 1966), *appeal dismissed*, 387 U.S. 427 (1967). If jurisdiction is lacking, he may — without first convening a three-judge panel — order the action dismissed; and a proper appeal is directed to the United States Court of Appeals. *Jacobs* vs. *Tawes*, 250 F.2d 611, 614-15 (4 Cir. 1957). See *Johnson* vs. *Harder*, 438 F.2d 7 (2 Cir. 1971). If, on the other hand, the single judge improperly convenes a three-judge court, and it decides the request for injunction on the merits, the proper appeal, nevertheless, lies to the United States Court of Appeals. *Stainback* vs. *Mo Hock Ke Lok Po*, 336 U.S. 368, 381 (1949). See *Bailey* vs. *Patterson*, 369 U.S. 31

(1962). Consequently, where, as here, the three-judge panel exercised an authority available to the single, convening judge, the same method of appeal should apply. The decision not being one required to be determined by a three-judge court, no direct appeal to this Court is available. See *Oklahoma Gas & Elec. Co.* vs. *Oklahoma Packing Co.*, 292 U.S. 386 (1934); *Bell* vs. *Waterfront Com. of New York Harbor*, 279 F.2d 853 (2 Cir. 1960); Note, 49 Va. L. Rev. 538 (1963).

In addition, it is important to note that Section 1253 permits direct appeals to this Court only from orders granting or denying, after notice and hearing, an interlocutory or permanent injunction. In the instant case, of course, the district court never even considered whether to grant or deny an injunction (A. 24). Indeed, as the Brief for Appellants repeatedly emphasizes (pp. 1, 6, 9, 12, 40, 42), the district court rendered its decision without conducting any kind of hearing. Consequently, it is impossible to say that the district court's decision involved the extraordinary interference with a state statutory procedure which Congress reserved to the three-judge court and direct appeal procedure. *Kennedy* vs. *Mendoza-Martinez*, 372 U.S. 144, 154-55 (1963); Comment, 77 Harv. L. Rev. 299, 300 (1963). Rather, "here there was no order of any kind granting or denying an injunction — interlocutory or permanent." *Gunn* vs. *Committee To End War*, 399 U.S. 383, 387 (1970). Under these circumstances,

this Court should disregard its prior noting of probable jurisdiction, and dismiss this appeal summarily. *Id.* at 391.[3]

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[3] None of the four cases cited by appellants' Jurisdictional Statement and Brief in support of this Court's jurisdiction are applicable, given the posture of the instant appeal. In *American Federation of Labor* vs. *Watson*, 327 U.S. 582 (1946), a temporary injunction had issued and the three-judge court had assumed subject-matter jurisdiction. 327 U.S. at 588-89. Similarly, in *Damico* vs. *California*, 389 U.S. 416 (1967), the three-judge court had also taken subject-matter jurisdiction, but denied the injunction for failure to exhaust state administrative remedies. 389 U.S. at 416-17. The three-judge court also denied the injunction on the merits in *Harper* vs. *Virginia State Bd. of Elections*, 383 U.S. 663, 664 (1966). In *Baker* vs. *Carr*, 369 U.S. 186 (1962), *reversing*, 179 F. Supp. 824 (M.D. Tenn. 1959), the district court had granted motions to dismiss under Rules 12(b)(1) and 12(b)(6), Federal Rules of Civil Procedure, because it regarded the constitutionality of misapportionment to be a political and, therefore, non-justiciable question. See *Baker* vs. *Carr*, *supra*, 179 F. Supp. at 826. In this last case, of course, this Court did take the case on direct appeal from a three-judge court dismissal for want of jurisdiction. However, in *Baker* vs. *Carr* — in contrast to the instant appeal — the basis for the district court's jurisdictional ruling and the basis for its ruling denying the requested relief were identical. The jurisdictional obstacle in the instant cases, by contrast, is different from and preliminary to any consideration of the constitutionality of Connecticut's garnishment statute.

II. Appellants' Complaints Are Not Justicable Under 28 U.S.C. § 1343(3).

A. Section 1343(3) Does Not Comprehend Deprivations Of Mere Property Rights.

In *Eisen* vs. *Eastman*, 421 F.2d 560 (2 Cir. 1969), the United States Court of Appeals for the Second Circuit held that a complaint alleging only a loss of money did not establish federal jurisdiction under 28 U.S.C. § 1343(3). *Id.* at 566. In the instant actions, the district court followed the same rationale, holding that the alleged garnishments of appellants' respective checking and credit union accounts constituted, at best, only an alleged taking of money; and, therefore, it lacked subject-matter jurisdiction (A. 24-25).

The basis of both these decisions is Mr. Justice Stone's concurring opinion in *Hague* vs. *C.I.O.*, 307 U.S. 496 (1939), in which he considered the relationship of two federal jurisdictional statutes, Section 24(1) and Section 24(14) of the Judicial Code of 1911. Section 24(1), now enacted as 28 U.S.C. § 1331, creates federal jurisdiction over all questions arising under the Constitution, laws and treaties of the United States, so long as a certain minimum dollar amount is in controversy. Section 24(14), now 28 U.S.C. § 1343(3), creates federal jurisdiction to redress deprivations, under color of state law, of any right, privilege or immunity secured by the Federal Constitution or laws providing for equal protection.

In his *Hague* opinion Mr. Justice Stone noted that many civil rights, including those of free speech and assembly — which he regarded as central to the controversy then before the Court — were not susceptible to pecuniary valuation. 307 U.S. at 529. In such cases, he ruled, Section 24(1) was in-

applicable; otherwise it would make Section 24(14) a nullity. *Id.* at 530. Comment, 39 Mich. L. Rev. 284, 285 (1940). On the other hand, he carefully limited his holding to situations in which the asserted federal right was not dependent for its existence upon an infringement of property. *Id.* at 531. The necessary implication is that, when the asserted federal right can be valued in terms of money, due observance must be paid to the requirement of Section 24(1) that federal courts not take jurisdiction of even constitutional questions unless a certain minimum dollar amount is involved. See Note, 1970 Duke L. J. 819, 821-23 (1970).[4]

However, appellants attempt to avoid the logic of Mr. Justice Stone's analysis by asserting that the legislative intent behind the 1871 Civil Rights Act was to redress deprivations of property under color of state law. Brief for Appellants, pp. 28-32. Some commentators provide some support for this assertion, see Note, *supra*, 1970 Duke L. J. at 835-36. But traditionally, the Fourteenth Amendment and associated Civil Rights Acts were primarily regarded as protectors of civil, not property rights. Comment, *supra*, 39 Mich. L. Rev. at 287 n. 6. See *Strauder* vs. *West Virginia*, 100 U.S. 303 at 306-07 (1880); *Ex Parte Virginia*, 100 U.S. 339 at 344-45 (1880). The fact

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[4] Courts and commentators have not been overly precise in their articulation of Mr. Justice Stone's formulation. Note, *supra*, 1970 Duke L. J. at 825. But whether the test focuses on susceptibility to pecuniary valuation or on dependence upon infringement of a property right, the interest involved in *Eisen* and those involved in the instant actions would all fall within the category required to comply with the jurisdictional amount requirement of 28 U.S.C. § 1331.

of the matter is that the Reconstruction enactments were loosely drawn, *United States* vs. *Williams*, 341 U.S. 70, 74 (1951); and were subjected to extremely restrictive interpretation during most of their duration. Gressman, *The Unhappy History of Civil Rights Legislation*, 50 Mich. L. Rev. 1323, 1336-37 (1952).[5] Indeed, not until 1961, when this Court decided *Monroe* vs. *Pape*, 365 U.S. 167, did commentators express concern that this Court had made the district courts forums "for litigating every invasion of personal and property interest alleged to be a denial of due process." Comment, 49 Calif. L. Rev. 145, 160 (1961). Consequently, appellants' assertion, that "the legislative and judicial history of Sections 1983 and 1343(3) conclusively demonstrate" those statutes apply to deprivations of property, is unfounded. Brief for Appel-

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[5] According to this author, the central concern of the Congress in enacting the 1871 Civil Rights Act — of which 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983 were originally a part — had nothing to do with deprivations of property. Rather Congress was concerned with the lawless conduct of the Ku Klux Klan and other southern elements; it regarded what is now 42 U.S.C. § 1985(3) as being the core of its enforcement efforts. *Gressman, supra*, 50 Mich. L. Rev. at 1334.

It is also interesting to note that, although Sections 1343(3) and 1983, in their original form as parts of Section 1, Act of April 20, 1871, ch. 22, 17 Stat. 13, were patterned after what is now 18 U.S.C. § 242, *Monroe* vs. *Pape, supra*, 365 U.S. at 226 (Frankfurter, J. dissenting), that latter, criminal statute has never been understood by this Court to apply to deprivations of property. See Annotation, 20 L. Ed.2d. 1454 (1969).

lants, p. 28. On the contrary, it appears the Reconstruction Congress felt it had adequately insured the property rights of newly-freed Negro citizens by enacting in 1866 what is now 42 U.S.C. § 1982.[6]

Moreover, at the time Mr. Justice Stone wrote his *Hague* opinion, it was most definitely unclear that the due process clause encompassed deprivations of property. Note, 52 Harv. L. Rev. 1136, 1137-40 (1939). Indeed, the earlier decisions of this Court suggested it did not. *Carter* vs. *Greenhow*, 114 U.S. 317 (1885); *Pleasants* vs. *Greenhow*, 114 U.S. 323 (1885); *Holt* vs. *Indiana Mfg. Co.*, 176 U.S. 68 (1900). See Comment, *supra*, 49 Calif. L. Rev. at 158. As Judge Friendly remarked in *Eisen* vs. *Eastman*, *Carter*, *Pleasants* and *Holt* are still good law; reading Sections 1983 and 1343(3) to apply to mere takings of money would clearly involve overruling these decisions. 421 F.2d at 566.

On the other hand, nothing in these decisions, or in Mr. Justice Stone's *Hague* opinion, suggests that the Fourteenth Amendment itself is inapplicable to deprivations of property. At issue in all these cases is simply the question whether an act of Congress gave the federal courts original jurisdiction to consider the alleged deprivation. Mr. Justice Stone read Section 24(14) of the Judicial Code so that federal courts could

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[6] Section 1982 was originally enacted as part of Section 2, Act April 9, 1866, ch. 31, 14 Stat. 27. In essence, it limits itself to prohibiting any discrimination between the rights of white citizens and other citizens to enjoy and dispose of real or personal property. *Jones* vs. *Mayer Co.*, 392 U.S. 409, 422-437 (1968).

consider deprivations of constitutional rights which could not be valued. This was at a time when Section 24(14) was regarded as being moribund, Note, 66 Harv. L. Rev. 1285, 1286 (1953) and when litigants sometimes asserted such intangible rights did have monetary values in order to assure Section 24(1) jurisdiction. Note, *supra*, 52 Harv. L. Rev. at 1136 n. 3. But Mr. Justice Stone also paid due recognition to the Congressional enactment of Sec. 24(1) in 1875 and to the inclusion of both that section and the civil rights jurisdictional section in the Judicial Code. *Hague* vs. *C.I.O.*, *supra*, 307 U.S. at 328-330. It was for this reason he distinguished between constitutional deprivations to which no monetary value could be attached and those whose value could be accurately calculated because of the underlying property interests involved.

Given the gradually expanding scope of the due process and equal protection concepts, the filtering mechanism provided by the *Hague* formulation serves a noteworthy and desirable function. Note, *supra*, 66 Harv. L. Rev. at 1287. As Judge Friendly pointed out in *Eisen*:

> "It has the merit of preserving not only the kind of case that was at the core of congressional concern in 1871 but a good many others that Congress would desire to have within the statute, while at the same time excluding cases that neither the Reconstruction Congress nor later Congresses could really have had in mind."

421 F.2d at 565-66. See *National Land & Investment Co.* vs. *Specter*, 428 F.2d 91, 98-100 (3 Cir. 1970).[7]

Furthermore, the fundamental validity of Stone's formulation has been confirmed by its repeated invocation by lower federal courts. See, e.g., *Weddle* vs. *Director*, 436 F.2d 342 (4 Cir. 1970); *National Land & Investment Co.* vs. *Specter, supra; Bussie* vs. *Long*, 383 F.2d 766 (5 Cir. 1967); *McManigal* vs. *Simon*, 382 F.2d 408 (7 Cir. 1967), *cert. denied*, 390 U.S. 980 (1968); *Howard* vs. *Higgins*, 379 F.2d 227 (10 Cir. 1967); *Gray* vs. *Morgan*, 371 F.2d 172 (7 Cir. 1966) *cert. de-*

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[7] Appellants' proposed interpretation of the relationship of Sections 1331 and 1343(3) clearly works violence to the *Hague* formulation. This interpretation dispenses with any inquiry whether a claimed deprivation involved an infringement of property and makes an allegation of state action the sole determinant of Section 1343(3) jurisdiction. Brief for Appellants, pp. 33-35. This interpretation would eliminate the requirement of a jurisdictional amount in controversy in a significant number of cases. See *Eisen* vs. *Eastman, supra*, 421 F.2d at 561 n. 1. Such a change may or may not constitute a desirable improvement, see generally American Law Institute, *Study Of The Division Of Jurisdiction Between State and Federal Courts* (1969); but clearly it would constitute "a major change in what has been understood to be accepted doctrine." *Johnson* vs. *Harder, supra*, 438 F.2d at 12 n. 6. Should this Court choose to adopt appellants' suggestion in construing these jurisdictional sections, it would surely raise some question concerning the Congress's traditional authority to define the jurisdiction of the inferior federal courts.

nied, 386 U.S. 1033 (1967); *Ream* vs. *Handley*, 359 F.2d 728 (7 Cir. 1966). This Court has itself, *per curiam*, affirmed three-judge court dismissals of civil rights actions involving only property right infringements. *Hornbeck* vs. *Hamm*, 393 U.S. 9 (1968), *affirming* 283 F. Supp. 549 (M.D. Ala. 1968); *Abernathy* vs. *Carpenter*, 373 U.S. 241 (1963), *affirming* 208 F. Supp. 793 (W.D. Mo. 1962). Furthermore, this Court recognized the less than all-inclusive nature of Section 1343(3) in its recent decision of *Wisconsin* vs. *Constantineau*, 39 L.W. 4128 (1971):

> "Congress could of course have routed all federal constitutional questions through the state court systems, saving to this Court the final say when it came to review of the state court judgments. But our First Congress resolved differently and created the federal court system and in time granted the federal courts various heads of jurisdiction, *which today involve most Federal constitutional rights.*"

39 L.W. at 4129 (emphasis added.) In other words, the legislative history of Section 1343(3) and the prior decisions construing that section permit only one conclusion: The statute is inapplicable to situations where, as here, the crux of the civil rights claim is interference, under color of state law, with appellants' interests in property.

B. The Only Deprivation Suffered By Appellants Was Interference With Their Property.

The district court's opinion states that the constitutional deprivation alleged in the instant cases — garnishment of appellants' bank accounts — "has to do almost entirely with the loss of money" (A. 24). In fact, appellants did not really lose

their deposited funds. Garnishment constitutes at best only a temporary interference with access to such funds (A. 25). Interference with deposited funds is only a property infringement; even if effected in a manner allegedly violative of the Constitution, it is not comprehended by the 1871 Civil Rights Act. *Bradford Audio Corp.* vs. *Pious*, 392 F.2d 67, 72 (2 Cir. 1968).

Appellants cite a number of cases and argue that certain lower court decisions based on Section 1343(3)'s property interest exclusion are inconsistent and unpredictable. Brief for Appellants, pp. 22-27. They forget that this Court and other courts have always sought to avoid unduly harsh results in cases involving property-type interests by recognizing the intimate degree to which such interests may be related to invaluable personal rights. See *Eisen* vs. *Eastman, supra*, 421 F.2d at 564-65. As Judge Friendly stated, Mr. Justice Stone's formulation — which asserted the applicability of the civil rights jurisdictional statute to situations not amenable to pecuniary valuation — should be "generously construed." *Id.* at 566.

But there is a limit to which any court can stretch the Stone formulation. Appellees contend that none of the decisions cited by appellants are applicable to the alleged facts of the instant actions. In the first place, in many of these cases — in which federal courts seem to have taken jurisdiction to consider alleged constitutional deprivations in connection with property-type interests — federal jurisdictions existed on in-

dependent grounds.[8] In the remaining cases, Section 1343(3) jurisdiction was based on the intimate relationship between the property-type interest involved and the enjoyment of invaluable personal liberties. See, e.g., *Rosado* vs. *Wyman*, 397 U.S. 397 (1970); *Goldberg* vs. *Kelly*, 397 U.S. 254 (1970); *Thorpe* vs. *Housing Authority*, 393 U.S. 268 (1969). Some lower courts have even decided this critical relationship existed in the case of certain special kinds of personal property. Compare *Santiago* vs. *McElroy*, 319 F. Supp. 284 (E.D. Pa. 1970), with *McCormick* vs. *First National Bank*, 322 F. Supp. 604 (S.D. Fla. 1971).

More important, however, for purposes of the instant appeal, are the important differences between the kinds of property-type interests involved in cases in which the courts have taken Section 1343(3) jurisdiction and in the instant actions. In each of the former cases the courts have taken pains to emphasize that, because of the nature of the property-type interest involved, its deprivation immediately and necessarily affected

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[8] Jurisdiction existed under 28 U.S.C. § 1331 in *Swarb* vs. *Lennox*, 314 F. Supp. 1091, 1096 (E.D. Pa. 1970), *prob. juris. noted*, 39 L.W. 3424 (1971); and in *Klim* vs. *Jones*, 315 F. Supp. 109, 115 (N.D. Cal. 1970). The courts properly took jurisdiction under 28 U.S.C. § 1343(3) on the basis of claims of unreasonable search and seizure in *Hall* vs. *Garson*, 430 F.2d 430, 438 (5 Cir. 1970); *Fuentes* vs. *Faircloth*, 317 F. Supp. 954, 956 (S.D. Fla. 1970), *prob. juris. noted*, 39 L.W. 3359 (1971); and *Laprease* vs. *Raymours Furniture Co.*, 315 F. Supp. 716, 721 (N.D. N.Y. 1970) Indeed, in *Hall* vs. *Garson*, the court specifically disclaimed any intention to consider the property interest exception to Section 1343(3), 430 F.2d at 439 n. 19. See also *Dale* vs. *Hahn*, No. 35059, — F.2d — (2 Cir. 1971).

the personal liberties of the persons involved. *Goldberg* vs. *Kelly, supra,* 397 U.S. at 264-65; *Johnson* vs. *Harder, supra,* 438 F.2d at 12; *Santiago* vs. *McElroy, supra,* 319 F. Supp. at 291; *Klim* vs. *Jones, supra.* See *Eisen* vs. *Eastman, supra,* 421 F.2d at 564-65; *Laprease* vs. *Raymours Furniture Co., supra,* 315 F. Supp. at 722-23.[9]

The instant cases, by contrast, involve only infringements of the use of money. Indeed, appellants do not even argue that, considered by themselves, checking or credit union accounts are so closely related to the exercise of personal liberties that their deprivation should be, for that reason alone, justiciable under Section 1343(3). Rather appellants invite the courts to elevate to the status of invaluable personal liberties

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[9] Appellants reliance upon *Escalera* vs. *New York City Housing Authority,* 425 F.2d 853 (2 Cir. 1970), *cert. denied,* 39 L.W. 3149, is misplaced. Although the appeals court's opinion does suggest Section 1343(3) jurisdiction exists when a deprivation of procedural due process incidentally affects a property interest, 425 F.2d at 864, this form of analysis has been sharply criticized. *Collins* vs. *Bolton,* 287 F. Supp. 393, 401 (N.D. Ill. 1968). Moreover, the author of the *Escalera* decision earlier wrote the court's opinion in *McCall* vs. *Shapiro,* 416 F.2d 246 (2 Cir. 1969), and sat on the panel deciding *Tichon* vs. *Harder,* 438 F.2d 1396 (2 Cir. 1971) ("For purposes of § 1343(3) jurisdiction the claim that appellant was denied procedural due process has no independent jurisdictional significance. . . ." 438 F.2d at 1399). Finally, unlike the instant cases, it clearly appears in *Escalera* that the court viewed the property-type interests affected by the alleged denial of procedural due process — including increases in rent — as being the equivalent of welfare benefits to which Section 1343(3) clearly applies. 425 F.2d at 864.

their interests in these private bank accounts simply on the basis of their allegations of poverty. Appellants claim that solely because they are impoverished, their private bank accounts are as necessary to their subsistence as are welfare payments or public housing benefits to their recipients. Therefore, they suggest, their deposited funds should enjoy the same special Section 1343(3) status as do interests in public housing or welfare rights.

The district court detected the fallacies in this argument and noted some of its flaws (A. 25). In the first place, not even all welfare benefits enjoy "personal liberty" status. *McClellan* vs. *Shapiro*, 315 F. Supp. 484, 487 (D. Conn. 1970). See *Dandridge* vs. *Williams*, 397 U.S. 471 (1970); *McCall* vs. *Shapiro, supra; Rothstein* vs. *Wyman*, 303 F. Supp. 339 (S.D. N.Y. 1969), *vacated*, 398 U.S. 275 (1970). But, more important, there are generic differences between the critical welfare benefits to which the courts have given "personal liberty" status and appellants' personal bank accounts. Welfare benefits enjoy their special status not simply because of the "brutal need" of their recipients for subsistence, *Kelly* vs. *Wyman*, 294 F. Supp. 893, 900 (S. D. N.Y. 1968), *aff'd. sub. nom. Goldberg* vs. *Kelly, supra;* but because they are dispensed as the result of a legislative determination that, without such assistance, welfare recipients cannot exercise their fundamental constitutional rights. *Goldberg* vs. *Kelly, supra*, 397 U.S. at 264-65; *Rothstein* vs. *Wyman, supra*, 303 F. Supp. 346-47. Obviously, no such legislative determination distinguishes appellants' privately accumulated funds.

More critical still, however, is the fundamental difference between the manner in which the courts have traditionally approached property-type interests deserving of Section 1343(3)

status and the approach appellants now propose. In the past, the courts have always determined whether a property-type interest was sufficiently related to the exercise of an invaluable personal liberty simply by scrutinizing the nature or character of the interest involved. See, e.g., *Goldberg* vs. *Kelly, supra* (welfare payments); *Thorpe* vs. *Housing Authority, supra* (occupancy of scarce public housing); *Klim* vs. *Jones, supra* (personal property without which plaintiff could not work). But appellants want the courts to abandon this traditional test. Instead they want this Court to elevate to the status of "personal liberties" their interests in their bank accounts — or, *a fortiori*, their interests in any kind of property — simply because of their impoverished status; they want to make the test depend not on the character of the property-type interest involved, but upon the existence of allegations of sufficiently desperate subjective need. Such an approach, of course, would not eliminate the Section 1343(3) property interest exclusion; rather it would make that exclusion inapplicable to any plaintiff who alleged in his complaint that "he really needed the money" or whatever else the particular property involved might be.

This Court cannot countenance such a suggestion. Making a litigant's allegations of subjective need the key determinent of whether civil rights subject-matter jurisdiction exists would expose the district courts to a wave of claims never before comprehended by Section 1343(3). It would make the simple allegation that a prisoner really needed his money or that a probationary social worker really needed her employment sufficient to establish jurisdiction. See *Howard* vs. *Higgins, supra; Tichon* vs. *Harder, supra*. Furthermore, many such actions would inevitably require evidentiary hearings preliminary to

taking jurisdiction as civil rights defendants sought to establish that the requisite subjective need or alleged economic hardship did not, in fact, exist. This Court should be extremely reluctant to impose such additional demands upon district courts which are already overburdened by the claims of civil rights litigants. *Eisen* vs. *Eastman, supra,* 421 F.2d at 561 n. 1.

III. The Relief Sought By Appellants Is Barred By 28 U.S.C. § 2283.

Appellants attack the alternative conclusion of the court below that 28 U.S.C. § 2283 precluded the relief sought on essentially three grounds. First, they contend that the garnishment process is not a "proceeding" under such Section 2283; second, that in any event, the request for a declaratory judgment and future relief lie beyond the "injunction" proscription of the statute; and finally, that an action under 42 U.S.C. § 1983 is warranted because of the inadequacy of remedies in the Connecticut courts. In addition, it has been suggested in such cases as *Cooper* vs. *Hutchinson,* 184 F.2d 119 (3 Cir. 1950), that Section 1983 is an "expressly authorized" exception to Section 2283, a point recognized but reserved by this Court in *Dombrowski* vs. *Pfister,* 380 U.S. 479, 485 n. 2 (1965).

Before proceeding further, it is important to place Section 2283 in its historical context. The statute dates from Section 5 of the Act of March 2, 1793, ch. 22, 1 Stat. 335. Its purpose, unchanged by Congress throughout its long history, is to assure that proceedings underway in state courts should be free from federal intrusion, *Toucey* vs. *New York Life Insurance Co.,* 314 U.S. 118, 135 (1941), in order to prevent need-

less friction between the state and federal systems, *Oklahoma Packing Co.* vs. *Oklahoma Gas & Elec Co.*, 309 U.S. 4, 9, (1939), and thus permit the state courts to pursue their responsibility, equally with the federal courts, "to guard, enforce and protect every right granted or secured by the Constitution of the United States . . ." *Zwickler* vs. *Koota*, 389 U.S. 241, 248 (1967); *Robb* vs. *Connolly*, 111 U.S. 624, 637 (1884). It is the statutory dimension of the broad doctrine of comity, see Note 83 Harv. L. Rev. 1870, 1872, (1970), predicated upon a "scrupulous regard for the rightful independence of state government", *Matthews* vs. *Rogers*, 284 U.S. 521, 525 (1932), *Harrison* vs. *N.A.A.C.P.*, 360 U.S. 167, 176 (1959), in furtherance of the "harmonious relation between state and federal authority" that is at the heart of our federal system, *Railroad Commission of Texas* vs. *Pullman Co.*, 312 U.S. 496, 501, (1941). The reach of the comity principle extends beyond intrusion into pending state proceedings to embrace the considerations of judicial abstension in the absence of such proceedings, *Harrison* vs. *N.A.A.C.P.*, *supra*; *Zwickler* vs. *Koota*, *supra*. However, Section 2283, a matter of first business for the Congress of the United States, codifies the broader principle in the specific context of pending state proceedings by teaching that they ". . . should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, to the state appellate courts and ultimately to this Court." *Atlantic Coast Line R. Co.* vs. *Engineers*, *supra*, 398 U.S. at 287.

A. The Connecticut Garnishment Process Is A "Proceeding" Within The Meaning Of 28 U.S.C. § 2283.

The Connecticut garnishment process, like Section 2283 itself, is of historical tradition. It finds its first codification in "An Act for the Recovery of Debts", Acts and Laws of Connecticut, p. 137 (1796), and its language, now incorporated in Conn. Gen. Stat. § 52-329, has remained virtually unchanged since that time. The origins of the process can be traced further to a pre-colonial commercial custom of London, *Ownby* vs. *Morgan*, 256 U.S. 94, 104 (1921), and beyond, see dissenting opinion of Black, J. in *Sniadach* vs. *Family Finance Corp., supra*, 395 U.S. at 349. It is a kind of attachment; literally, a process of "foreign attachment", extending to certain assets of a defendant in the hands of a third party. The purpose is to seek security for any judgment subsequently rendered against such a defendant and the effect of the garnishment process is to put a conditional lien on the assets of the defendant in the hands of a third party during the pendency of the suit. *McInnes* vs. *McKay*, 127 Me. 110, 141 Atl. 699, 702 (1928) *aff'd. per curiam* 279 U.S. 820 (1929). It is a process carefully prescribed by an extensive body of statutes of long standing. For instance, it does not apply at all to wages, Conn. Gen. Stat. § 52-361; is restricted in the case of bank checking accounts, Conn. Gen. Stat. § 52-337a; and exempts those necessities of life which are themselves made exempt from execution under Conn. Gen. Stat. § 52-

352.[10] It is true, as the appellants point out, that the process is initiated by a lawyer in his capacity as a Commissioner of the Superior Court, Conn. Gen Stats. §§ 51-85, 52-89, a "liberal policy" and "extraordinary power" long noted and taken into account by the Connecticut courts and their many interpretations of the statutes. *Finch* vs. *Great American Co.*, 101 Conn. 332, 335, 125 Atl. 628, 629 (1924). It is available at the outset of suit, Conn. Gen. Stat. § 52-329, or after suit has commenced, Conn. Gen. Stat. § 52-281, although in the latter case it is subject to a court order. Service of the garnishment process may be effected by a sheriff, a deputy sheriff, a constable of the town in question, an other "proper officer", or by an "indifferent person", Conn. Gen. Stat. § 52-50.

Following service, a defendant may proceed under Conn. Gen. Stat. § 52-301 to compel a plaintiff to verify a claim under oath and submit particulars, or may seek a discharge of a garnishment believed to be excessive under Conn. Gen. Stat. § 52-302, a separate proceeding which results in a final judgment for the purposes of appeal, *Sachs* vs. *Nussenbaum*, 92 Conn. 682, 686, 104 Atl. 393, 394 (1918), or dissolve the garnishment upon substitution of a bond with a surety, as established by the court under Conn. Gen. Stat. § 52-304. A surety need not be, as assumed by the appellants (Brief for

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[10] It is probably also restricted as to certain kinds of tort actions and with respect to certain classes of defendants as set forth in Conn. Gen. Stat. § 52-279. Appellants assert that these restrictions are applicable only to attachments (See Brief for Appellants, p. 17 n. 8), but the better view would extend them to garnishments as well. See *Jepson* vs. *Toni Co.*, 20 Conn. Supp. 287, 291, 133 A.2d 150, 152 (1957).

Appellants, p. 46a) a professional surety, *King* vs. *Malone*, 91 Conn. 342, 99 Atl. 691 (1917); *Mallory* vs. *Hartman*, 86 Conn. 615, 86 Atl. 567 (1913). Of course, voluntary arrangements between the parties for dissolution will be binding. *Fazzano* vs. *Martin*, 94 Conn. 91, 93, 108 Atl. 512, 513 (1919). It is a process akin to that which has been considered by this Court on several occasions, e.g., *Ownby* vs. *Morgan*, *supra*, *Harris* vs. *Balk*, 198 U.S. 215 (1905), and which has been sustained against a Constitutional attack identical with that brought by the appellants. *McKay* vs. *McInnes*, *supra*. See *Coffin Bros. & Co.* vs. *Bennett*, *supra*.

The Connecticut garnishment process, then, is no whimsical aberration; it is addressed in over fifty sections of the Connecticut General Statutes and existed in statutory form at least as long as the predecessors of 28 U.S.C. § 2283. As a matter of custom and practice, it has existed even longer.[11] Given the historical purpose of Section 2283, and the coexistent standing of the garnishment process as practiced throughout the history of the State of Connecticut, this Court should be loath to intervene in view of the action pending in the Connecticut court except upon a clear and express statutory direction. Section 2283 is phrased in terms of profound substance, and not of form; it is concerned with the very essence of our

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[11] Professor Stephenson, in his 1966 Supplement to Connecticut Civil Procedure (1959) prefaces his section on "Garnishment" with a paragraph entitled "A Warning to the Garnishee" which advises that "contrary to the statement in the original text, there is case law authority for both attachment and garnishment predating statutes authorizing these procedures . . ." Stephenson, *supra*, p. 32

federal system and its admonition is against interference with the processes of a state's judicial system, once set in motion. No more concrete example of such process — or "proceedings" — rooted in the legal ancestry of a state can be summoned to mind than the process of garnishment which is involved in the instant actions. See *Jackman* vs. *Rosenbaum Co.*, 260 U.S. 22, 31 (1922).

Further, this Court has made it perfectly clear that the concept of "proceedings" in Section 2283 is, consistent with its historical purpose, a broad one:

> ". . . it includes all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process . . . It applies alike to actions by the Court and by its ministerial officers, applies not only to executions issued on a judgment but to any proceedings supplemental or ancillary taken with the view to making the suit or judgement effective."
>
> *Hill* vs. *Martin*, 296 U.S. 393, 403 (1935).

The concept of "proceedings" has been held to apply to such diverse steps and actions as the efforts of a receiver, *Drexler* vs. *Walters*, 290 F. Supp. 150, 155 (E.D. Minn. 1968); a sheriff's sale on execution, *American Association* vs. *Hurst*, 59 Fed. 1 (C.C.A.6. 1893); a trustee's accounting to his beneficiaries, *Hershey* vs. *First National Bank and Trust Co.*, 22 F. Supp. 517 (M.D. Pa. 1938); and, of increasing recent importance, arrests and issuances of warrants, *Brooks* vs. *Briley*, 274 F. Supp. 538, 553 (M.D. Tenn. 1967), *aff'd. per curiam*, 391 U.S. 361 (1968). It has been specifically held to apply to pre-judgment lien measures taken in furtherance of pending litigation. *Javelin Oil Co.* vs. *Morrow Drilling Co.*, 266 F. Supp. 119, 122 (W.D. La. 1967). See *National Labor Relations Board* vs. *Underwood Machine Co.*, 198 F.2d 93, 94 (1 Cir. 1952). In the

instant case, the garnishment effected by deputy sheriff Friedler, acting as agent for attorney Goldman and Household Finance Corporation, was clearly a step taken at the institution of suit with a view to making the judgment effective, and this step is a "proceeding" under Section 2283, *Hill* vs. *Martin*, *supra*, 296 U.S. at 403.

B. Declaratory And Injunctive Relief Were Properly Denied.

The appellants claim that, notwithstanding the applicability of Section 2283 to the request for a present injunction, the court below was bound to consider, and grant, the request for a declaratory judgment and an injunction against future proceedings. At the outset, it should again be noted that with respect to the declaratory judgment aspect, no direct appeal lies to this Court under 28 U.S.C. § 1253 from the lower court's action. *Perez* vs. *Ledesma*, 39 L.W. 4214, 4216 (1971).

It is true that Section 2283 speaks historically only of an "injunction" and not of a "declaratory judgment". The declaratory judgment procedure is relatively new in comparison to Section 2283. See Act of June 14, 1934, ch. 512, 48 Stat. 955 (28 U.S.C. §§ 2201-02). Subsequently, in 1948, Congress did revise Section 2283 without including specific reference to declaratory judgments, Act of June 25, 1948, ch. 646, 62 Stat. 968. By comparison, the Act of August 24, 1935, ch. 641, § 30, 49 Stat. 770 (7 U.S.C. § 623(a)), amending the Agricultural Adjustment Act, Act of May 12, 1933, ch. 25, tit. I, 48 Stat. 31, illustrates that Congress can explicitly ban declaratory judgments when it has the matter clearly in mind. However, the revision of Section 2283 in 1948 occurred in the context of

a general code revision and no special concern for the relation of Section 2283 and declaratory judgments is apparent. Further, it is one thing to examine the close, technical language relating to the processing tax on, for instance, rice, in the Agricultural Adjustment Act, and another to examine the purpose of a statute such as Section 2283 which has expressed a broad and vital national policy throughout our history.

Although this Court appears to have reserved decision on the precise point, *Younger* vs. *Harris*, 39 L.W. 4201, 4206 (1971), the court below elected to meet the issue head-on as an alternative basis for its decision, and decided the issue correctly in the context of this case. The view of the lower court is consistent with the broad purposes of Section 2283, which is concerned with the procedural relationship of the federal judicial system to that of a state whose judicial machinery has been previously set in motion. As a practical matter, a declaratory judgment is recognized as resulting in the same kind of intervention in state proceedings that the long standing policy limiting injunctions was designed to avoid. *Samuels* vs. *Mackell*, 39 L.W. 4211, 4213 (1971); *Perez* vs. *Ledesma*, *supra*, 39 L.W. at p. 4220, (opinion of Brennan, J.). See Note, *supra*, 83 Harv. L. Rev. at 1880. It is true that *Samuels* and *Perez* are esentially "abstention" cases and do not need to go to the direct question of a declaratory judgment prohibition under Section 2283; in this regard, they draw force from the earlier consideration of the effect of declaratory judgments in *Great Lakes Dredge & Dock Co.* vs. *Huffman*, 319 U.S. 293, 299 (1943). However, given that in the instant cases state proceedings are already pending, the considerations affecting a decision to intervene with a declaratory judgment are even more sensitive in view of the long-standing policy of

Section 2283. The majority of cases directly considering the point have specifically held that a declaratory judgment is embraced within the proscription of Section 2283, e.g. *McLucas* vs. *Palmer*, 427 F.2d 239, 241 (2 Cir. 1970); *City of Houston* vs. *Standard-Triumph Motor Co.*, 347 F.2d 194, 197-199 (5 Cir. 1965), *cert. denied*, 382 U.S. 974 (1966); *Goss* vs. *Illinois*, 312 F.2d 257, 259 (7 Cir. 1953); *H. J. Heinz Co.* vs. *Owens*, 189 F.2d 505, 508 (9 Cir. 1951), *cert. denied*, 342 U.S. 905 (1952); *Brooks* vs. *Briley*, *supra*, 274 F. Supp. at 553.

If special circumstances as found in *Dombrowski* vs. *Pfister*, 380 U.S. 479 (1965), again essentially an abstention situation, warrant exception even after the commencement of the state proceedings, there is nothing in the instant case to give rise to its application. We do not have here any allegations of bad faith application of statutes resulting in a "chilling effect" on first amendment exercise, *Dombrowski* vs. *Pfister*, *supra*, 380 U.S. at 487. See *Samuels* vs. *Mackell*, *supra*, 39 L.W. at 4211 (opinion of Brennan, J.). *Zwickler* vs. *Koota*, 389 U.S. 241 (1967), is not to the contrary; *Zwickler* again was an abstention situation so that the question of Section 2283 as a bar in the face of a pending proceeding was not reached; further, what *Zwickler* teaches is that in an abstention situation, even though an injunction may be inappropriate, there is nonetheless the duty to consider the application of a declaratory judgment, *Zwickler* vs. *Koota*, *supra*, 389 U.S. at 254.

The question of the requested declaratory judgment is also bound up with the question of a class action, for the appellant Dorothy Lynch seeks relief as a member of a class, and she seeks it primarily against deputy sheriff Friedler as representative of a defendant class. The court below concluded that

no class as claimed by the appellants could be defined as a practical matter (A. 25) and did not reach the question of Friedler's class, although neither consideration was necessary for its alternative conclusions. The question of the adequacy of the class determination is not presented directly in this appeal, which is appropriate in view of the jurisdictional limitation of 28 U.S.C. § 1253. Nonetheless, it is worth observing the difficulties imposed by the appellants' assertion.

The appellant Dorothy Lynch seeks to represent those persons who constitute a class "encompassing those residents of the state of Connecticut who have been and will be in the future, subjected to and or threatened with pre-judgment . . . garnishment as authorized by § 52-329 . . . of the Connecticut General Statutes." (A. 6), and further seeks to establish that the defendant Friedler represents a class consisting of "the sheriffs, deputy sheriffs, and constables in the state of Connecticut who are authorized to serve writs of attachment and garnishment", (A. 6). No class representation is ascribed to the appellees Household Finance Corporation and Goldman, or to the Credit Union.

As discussed above, the garnishment process is available at the beginning of and during virtually any civil action for damages in Connecticut, with the special exceptions noted. See pp. 25-26, *supra*. A defendant can avail himself of the process by way of a counterclaim against a plaintiff during the pendency of an action, Conn. Gen. Stat. § 52-282; and can, of course, become a garnishing plaintiff in his own right by separate action. Subject to the conditions noted, it is a process available to any party, natural or legal, who is or may be asserting a claim for money damages against any other party, whether by original action or counterclaim. Thus, any person,

natural or legal, who asserts or against whom such a claim is asserted is a candidate for the class described by the appellants.

No unifying characteristic or common thread of interest of the class exists. It is not limited to or identified by to such customary conditions as membership in an organization, *Louisiana ex rel Gremillion* vs. *N.A.A.C.P.*, 366 U.S. 293 (1961), occupation, *Smith* vs. *Board of Ed.*, 365 F.2d 770 (8 Cir. 1966); or race, *Norwalk CORE* vs. *Norwalk Board of Ed.*, 298 F. Supp. 203 (D. Conn. 1968). The alleged class certainly includes persons who have in the past, or may in the future, in their own right, make use of the very process complained of in the instant case. Clearly, as residents, the defendants Goldman, Friedler, and the Credit Union corporation would fall within the alleged class. Furthermore, it would not be possible as a practical matter to ascertain even those members of the alleged class who were, as of the commencement of this action subjected to the garnishment process in Connecticut, much less determine those persons who sometime had been or might be in the future so subjected. The real definition of this class is, quite simply, all natural and legal persons who are Connecticut residents. As such, it is a class beyond the contemplation of Rule 23, Federal Rules of Civil Procedure, a conclusion properly reached below.[12]

The other class alleged in the complaint is that theoretically represented by the appellee Friedler. This alleged class consists of all "sheriffs, deputy sheriffs and constables in the State of Connecticut" (A. 6). Much of the foregoing concerning

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[12] Consider, for instance, the notice requirement, *Eisen* vs. *Carlisle & Jacquelin*, 391 F.2d 555, 564 (2 Cir. 1968).

the appellants' own class applies equally to Friedler's class, but two additional points should be made.

First of all, it appears that in alleging the existence of this class, the appellants are attempting to cast their net far enough to catch all of the ministeral officers who could effect service of garnishment, thus precluding the utilization of these processes by any litigant in Connecticut. Some fish, however, have escaped, for Conn. Gen. Stat. § 52-50 permits service of such process to be made by, in addition to those persons cited, any "other proper officer" and by "some indifferent person". These are large fish indeed, for it is unnecessary even for an indifferent person to be a resident of the State of Connecticut. By very definition, this group is at the same time without bounds and would be unaffected by the equitable relief sought.

Secondly, and more importantly, the class allegedly represented by Friedler is not the appropriate target. Friedler himself is only a deputy sheriff, and does not fill all of the offices named in Conn. Gen. Stat. §52-50. But more importantly, servers of process have no stake in the enterprise; they are not adversaries, but merely agents for litigants seeking to use the process in question. It is inappropriate to look to this class as representing the interests opposed to the appellant. Neither appellees Goldman nor Household Finance Corporation were designated as representatives of classes. Attorney Goldman is essentially in the same agency context as deputy sheriff Friedler, and the party with the genuine adversary interest in this particular case — but no adverse interest with respect to any other member of the alleged class — is Household Finance Corporation. It, in turn, is a member of undefinable group consisting of every potential plaintiff (or defendant) — whether resident or non-resident — in the Connecticut courts, a

"class" which, at least as to its resident members, is co-extensive and identical to the appellants' alleged class.

Much of the difficulty with the alleged classes bears on the request for future injunctive relief. Passing over the absence of any kind of "case or controversy" within which properly to assess the claim, *Younger* vs. *Harris, supra*, 39 L.W. at 4204, and the complete absence of a showing of anticipated irreparable injury such as would justify such equitable relief, *Boyle* vs. *Landry*, 39 L.W. 4207, 4208 (1971), there are simply no parties before the court in any kind of genuine representative capacity who can effectively be made subject to the court's future jurisdiction.

C. Appellants' Remedies Are Adequate Under State Law.

Appellants contend that the dismissal below deprives them of any forum within which to adjudicate federal Constitutional rights. Put another way, they argue that the efficacy of Section 2283 is grounded on the assumption of the adequacy of remedies under state law; since these remedies are not in fact adequate in Connecticut, say appellants, the assumption fails, and Section 2283 should, therefore, not apply. Presumably there would be two bases for the assertion: either the State of Connecticut has maliciously refused to accord the appellants access to its legal process, the kind of harrassing action that gave rise to many of the civil rights acts in the first place, *Monroe* vs. *Pape*, 365 U.S. 167, 180 (1961); or there simply is no procedural device by which they could initiate the claims in the Connecticut courts and proceed, if necessary, to this Court. See *Sniadach* vs. *Family Finance Corp., supra*; *Atlantic*

Coast Line R. Co. vs. *Engineers, supra,* 398 U.S. at 287. No claim is made in the former instance, and it remains to examine Connecticut procedure for the availability of the remedies sought by the appellants.

What appellants have done is to obscure a critical difference between the limited authority of state courts in Connecticut to review specific garnishments on their merits and the undoubted authority of those same state courts to vindicate rights secured by the federal Constitution. Even though the state courts may have no power to release good faith garnishments except to the extent that they are excessive, *Clime* vs. *Gregor,* 145 Conn. 74, 76-77, 138 A.2d 794, 795 (1958), they certainly have the power and the responsibility to adjudicate constitutional objections to any state statutory procedure, see, e.g., *State* vs. *Licari,* 153 Conn. 127, 214 A.2d 900 (1965).

Connecticut's statutory procedure provides a variety of means by which appellants could raise in state court proceedings their constitutional objections to the garnishment process. For example, Mrs. Lynch has available to her in the Circuit Court — where appellee Household Finance Corporation's action against her is now pending — essentially the same injunctive remedies she sought in the instant action, Conn. Gen. Stats. §§ 52-2a, 52-471; and she could seek such remedies by way of counterclaim, Conn. Gen. Stat. § 52-96. Alternatively, she could raise her constitutional objections by proceeding under the specific Connecticut statutes permitting her to seek verification of the need for attachment, Conn. Gen. Stat. § 52-301; to obtain the discharge of an excessive attachment, Conn. Gen. Stat. § 52-302; or to substitute a bond, Conn. Gen. Stat. § 52-304. Finally, Section 52-29 of the general statutes would permit her to commence an action for a declaratory

judgment concerning the disputed garnishment in either the Court of Common Pleas or the Superior Court, or, alternatively, begin with a request for a declaratory judgment in a counterclaim in the pending Sixth Circuit Court action, Conn. Practice Book, § 310(e), and then move to transfer the action to a court of appropriate jurisdiction for determination of the issues, Conn. Gen. Stats. §§ 52-32, 52-33.

It is important to observe that the constitutionality of the garnishment process is not a closed issue in Connecticut. The constitutional claims raised by the appellants have never been presented to the Connecticut Supreme Court, as they have to this Court, *McKay* vs. *McInnes, supra.* They have been considered directly only in one lower court case, *Michael's Jewelers* vs. *Handy*, 6 Conn. Cir. 103, 266 A.2d 904 (1969), a decision of the Appellate Division of the Connecticut Circuit Court arising from the same Sixth Circuit Court in which the basic action is now pending. The court there, relying upon prior decisions of this Court in *McKay* vs. *McInnes, supra, Ownby* vs. *Morgan, supra,* and *Coffin Bros. & Co.* vs. *Bennett, supra,* upheld the constitutionality of the process in the face of claims identical to those presented here. This decision was apparently not appealed further. Thus, not only is there ample means of presenting the claims desired, but the question has never been passed on by the highest court in Connecticut, *Harrison* vs. *N.A.A.C.P., supra,* 360 U.S. at 1159, and a clear path is indicated for the appellants by Section 2283, *Atlantic Coast Line R. Co.* vs. *Engineers, supra,* 398 U.S. at 287.

Finally, appellants' repeated invocation of the *Sniadach* decision is singularly inappropriate. For one thing, the Connecticut statute specifically prohibits garnishment of the special kind of property involved in the *Sniadach* case, Conn. Gen.

Stat. § 52-361. For another, *Sniadach* was itself a state court case, appealed to this Court from the Wisconsin Supreme Court. See *Family Finance Corp* vs. *Sniadach*, 37 Wis.2d 163, 154 N.W.2d 259 (1967). It ill behooves appellants to rely on a state court decision to argue that the state courts of Connecticut provide no available forum.

D. Section 1983 Is Not An Exception To Section 2283.

It remains to consider whether a suit in equity under 42 U.S.C. § 1983, the statute creating the cause of action for which 28 U.S.C. § 1343 (3) is the jurisdictional implementation, is an action "expressly authorized by Act of Congress" and thus excepted from the operation of Section 2283.[13] This Court has noted but declined to reach this question on prior occasions, e.g., *Dombrowski* vs. *Pfister, supra*, 380 U.S. at p. 485 n. 2; *Cameron* vs. *Johnson*, 390 U.S. 611, 614 n. 3 (1968).

Section 2283 has undergone only two significant changes in its long history. As originally enacted, it contained no exception to its broad prohibition, Act of March 2, 1793, ch. 22, § 5, 1 Stat. 335. In 1875, an amendment providing for

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[13] In addition to the "expressly authorized" exception, Section 2283 contains two others: the first, permitting intervention "in aid of its jurisdiction," pertains to the protection of a federal court's previously acquired jurisdiction, as where it was the first of two competing courts to assert jurisdiction over a contested res, *Mandeville* vs. *Canterbury*, 318 U.S. 47, 48-49 (1943). The other exception permits intervention to "protect or effectuate its judgments." Neither is applicable here.

an express exception to permit a bankruptcy court to stay conflicting state proceedings was added, Rev. Stat. § 720 (1875)and in this form, the statute appears as § 265 of Judicial Code of 1911, Act of March 3, 1911, ch. 231, § 265, 36 Stat. 1162. Subsequently, Section 265 underwent revision in the 1948 code and emerged in its present form as 28 U.S.C. § 2283; in this revision in 1948, the specific bankruptcy exception was dropped and the three specific exceptions noted above first appear.[14]

The history of the statute is discussed at length in *Toucey* vs. *New York Life Insurance Co.*, 314 U.S. 118 (1941). *Toucey* is generally thought of as limiting the development of further non-statutory exceptions to (then) Section 265, while the 1948 revision resulting in Section 2283 is suggested by the Advisor to restore the law as it was before *Toucey*. *Boyle* vs. *Landry, supra*, 39 L. W. at 4210 n. 3 (Douglas, J., dissenting). The authorities appear in agreement that the 1948 revision was not intended to make any significant changes in the statute, nor to repeal any of the pre-*Toucey* exceptions to its predecessor, Section 265. See *Amalgamated Clothing Workers of America* vs. *Richman Bros.*, 348 U.S. 511, 523 (1955) (Warren C. J., Dissenting); Note, 50 Va. L. Rev. 1404, 1406 (1964); Note, 74 Harv. L. Rev. 726, 733, 737 (1961). It is instructive to test this premise and to gauge the reach of the "expressly authorized" exception of the present Section 2283, examining how the earlier statutory exceptions became incorporated in the 1948 revision. *Toucey* takes us a long way on this journey and notes, in 1941, the existence of only five

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[14] See note 13 *supra*.

statutory exceptions to Section 2283:

1. *Bankruptcy Proceedings*: This exception was specifically incorporated in Section 265 of the 1911 Code at the time of the *Toucey* decision. It is not clear why it needed to be. The Bankruptcy Act of 1867, ch. 176, § 21, 14 Stat. 526 expressly provided that a federal court in bankruptcy had the power to stay other actions against the bankrupt, as it does in its present form, 11 U.S.C. § 29. This alone would seem to have been a clear enough indication that the Bankruptcy Act was in fact an express exception; nonetheless, Congress felt obliged in 1875 to remove any doubt by incorporating a specific exception to the anti-injunction statute by allowing, in the face of pending state proceedings, an injunction "authorized by any law relating to bankruptcy," Rev. Stat. § 720 (1875). The year 1875 is not without significance: the predecessors of Sections 1983 and 1343 (3) in Section 1 of the Civil Rights Act of April 20, 1871, ch. 22, 17 Stat. 13, had been in effect for four years; if the specific direction of the Bankruptcy Act nonetheless required express inclusion in the anti-injunction statute, how much more so would the then version of Section 1983 which, as now, contained no such reference to the question of a pending state proceeding nor any authorization permitting a stay or other interference. That civil rights legislation was in the wind in 1875 is evidenced by the passage of the Civil Rights Act of that year, Act of March 1, 1875, 18 Stat. 335, subsequently overturned in *Civil Rights Cases*, 109 U.S. 3 (1883). In the 1948 revision of the anti-injunction statute, the specific reference to the Bankruptcy Act was removed, and the Revisor's note, H. R. Rep. No. 308, 80th Cong. 1st Sess. A 181 (1947), suggests that it was intended to be included in the "expressly authorized" exception. See

Note, *supra*, 74 Harv. L. Rev. at 739. In view of the express cognizance taken by the Bankruptcy Act of a situation involving a related and pending state proceeding, and in view of the express authorization in that Act to intervene in such proceedings — two characteristics not at all applicable to Section 1983 — this suggestion is perfectly justified, and the Bankruptcy Act exception can be clearly recognized today as one "expressly authorized."

2. *Removal Actions*: The removal statutes originally contained a direction that state proceedings, once the cause had been removed to the federal court, should "proceed no further". Act of September 24, 1789, ch. 20, § 12, 1 Stat. 79. It was not felt necessary to incorporate this section in 1875 as in the case of the Bankruptcy Act; the same year this Court had deemed it an implied exception to the anti-injunction statute as one necessary to sustain and protect federal jurisdiction, *French* vs. *Hay*, 89 U.S. (22 Wall) 250 (1875), where it would seem to fall in the light of the 1948 revision.

3. *Shipowner's Liability:* The Act of March 3, 1851, ch. 43, § 4, 9 Stat. 635,[15] provided that, after a shipowner transferred his interest in a vessel to a trustee for the benefit of his creditors, "all claims and proceedings against the owner or owners shall cease." *Toucey* deemed this, similar in its phraseology to the original removal statute, as another "implied exception," as it had been viewed in *Providence and New York Steamship Co.* vs. *Hill Mfg. Co.*, 109 U.S. 578 (1883). This again would fit clearly within the "aid of jurisdiction" exception of § 2283 today.

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[15] Presently, 46 U.S.C. § 185.

4. *Interpleader*: This 1926 statute, ch. 273, § 2, 44 Stat. 416,[16] contained, at the time of *Toucey*, an express statement with regard to the power "notwithstanding any provision of the judicial code to the contrary" to enjoin the institution or prosecution of "any suit or proceeding in any state court." This is as clear an example of an express exception as can be found.

5. *Farm-Mortgage Act of 1933*: At the time of the *Toucey* decision, the Frazier-Lempke Farm-Mortgage Act of 1933, 47 Stat. 1473,[17] did not include an express authorization for an injunctive remedy against state proceedings but was phrased in similar fashion to the early removal statutes and the Shipowner's Act of 1851. It provided that proceedings "shall not be instituted, or if instituted . . . shall not be maintained in any court" once the federal jurisdiction described in the Act was asserted. However, the statute was amended in 1935 to provide that the federal court may "stay all judicial or official proceedings in any court," Act of August 28, 1935, § 2, 49 Stat. 944, so that in the light of the 1948 revision of Section 2283, it is readily seen as an "expressly authorized" exception.

There are other non-statutory situations discussed in *Toucey*: the "res" question which is clearly subsumed in Section 2283 as an "aid of jurisdiction" exception; the enjoining of fraudulent state judgments, cases found in *Toucey* to rest on a "doubtful" foundation, 314 U.S. at 136, which are not so much exceptions as questions of applicability in the light

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[16] Presently, 28 U.S.C. § 2361.

[17] Presently, 11 U.S.C. § 203(s) (2).

of the qualification of § 2283 with respect to "proceedings" pending in a state court, see *Ex Parte Young*, 209 U.S. 123 (1908); and the so-called "relitigation" cases, the substance of *Toucey* itself, which, again, that decision declines to recognize as being "ill-considered," *Toucey, supra*, 314 U.S. at 139.[18] To the extent that this class of cases is identified today, it would seem that they would be measured under Section 2283 by either the "aid of jurisdiction" or the "effectuation of judgment" exceptions. There was an additional exception apparently emerging to some extent before the *Toucey* decision which is not discussed directly in that case. This appears in *United States* vs. *Inaba*, 291 Fed. 416 (E.D. Wash. 1923), which does not fit easily into the Section 2283 exceptions and can be explained only in terms of the paramount interest of the United States in seeking an injunction in a federal court against a state proceeding to which it is not a party and in which an irreparable injury to a national interest is threatened. See *Leiter Minerals, Inc.* vs. *United States*, 352 U.S. 220 (1957).

Between the date of *Toucey*, 1941, and the revision seven years later, this Court in 1944 added one more implied ex-

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[18] One additional statutory exception in the Habeas Corpus Act is referred to in *Toucey* in a footnote, but not discussed at length, perhaps because the "exhaustion of state remedies" requirement of the statute was thought to preclude in most instances intervention in a pending proceeding. Nonetheless, the language of the statute, today 28 U.S.C. § 2251, would appear to qualify as an express exception. *See Toucey* vs. *New York Life Insurance Co., supra*, 314 U.S. at 132 n. 4.

ception to the list, dealing with emergency price controls, Act of January 30, 1942, ch. 26, 56 Stat. 23. *Bowles* vs. *Willingham*, 321 U.S. 503, 510 (1944). This exception is generally deemed to fall within the "aid of jurisdiction" class of Section 2283, although the jurisdiction here was that of a federal administrator. See Note, *supra*, 74 Harv. L. Rev. at 735.[19]

It is thus impossible from the history of Section 2283 to find any intention to embrace Section 1983 within its "expressly authorized" exception. The precise opposite is true. Congress did not see fit to address the question in 1875, as it did in the case of the bankruptcy exception, notwithstanding the forceful language of the Bankruptcy Act. Nor was any attempt made to address the language of Section 1983 in the manner accomplished in the case of the Interpleader Act in 1926 or the amendment to the Frazier-Lempke Act in 1935. Section 1983 is not mentioned at all in *Toucey*, and this omission, in the light of the scholarship of that opinion, is decisive. Certainly no decision of this Court after *Toucey* (1941) argues against this premise; indeed, the opposite is true, since in adding one more "implied" exception, *Bowles* vs. *Willingham*, *supra*, this Court readily accepted *Toucey* as the starting point of the catalogue of Section 2283 exceptions. The recognized exceptions existing before 1948 are all readily

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[19] It has been suggested that a more proper view would be to assess this exception, dealing with wartime emergency powers of a federal administrator, through the eyes of *Leiter Minerals, Inc.* vs. *United States*, *supra*. See *Baines* vs. *City of Danville*, 337 F.2d 579, 589 (4 Cir. 1964), *cert. denied*, 381 U.S. 939 (1965).

accounted for in the 1948 language of Section 2283 and there is simply no room for Section 1983.

Although there is authority to the contrary,[20] the majority of lower court decisions since 1948 have come to the same conclusion. *Brooks* vs. *Briley, supra,* 274 F. Supp. at 553. See, e.g., *Stevens* vs. *Frick* 372 F.2d 378, 381-82 (2 Cir. 1967), *cert. denied,* 387 U.S. 920; *Baines* vs. *City of Danville, supra,* 337 F.2d at 590-91; *Moss* vs. *Jones,* 288 F.2d 342, 344 (6 Cir. 1961), *cert denied,* 368 U.S. 868; *Smith* vs. *Village of Lansing,* 241 F.2d 856, 859 (7 Cir. 1957). This Court, as noted above, has recognized the question, but has preferred to act on other grounds. However, in such cases as *Younger* vs. *Harris, supra,* and *Atlantic Coast Line R. Co.* vs. *Engineers, supra,* where the question of a pending state proceeding was before it, the Court has couched its abstention action in the same purposeful terms that it has used consistently in its interpretation and explanation of Section 2283. The same is true of like cases which stopped short of an actual state proceeding, *Harrison* vs. *N.A.A.C.P., supra, Douglas* vs. *City of Jeanette,* 319 U.S. 157 (1943), *Samuels* vs. *Mackell, supra,* where again, the decision to refrain from effective intervention was on the basis of a judicial policy identical to the legislative purpose

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[20] See *Cooper* vs. *Hutchinson,* 184 F.2d 119, 124 (3 Cir. 1950); *Machesky* vs. *Bizzell,* 414 F.2d 283, 286-91 (5 Cir. 1969). It is also necessary to observe that there was a conflict of authority before 1948: Compare *Aultman & Taylor Co.* vs. *Brufield,* 102 Fed. 7 (C.C.N.D. Ohio 1900), *appeal dismissed,* 46 L. Ed. 1265, 22 S. Ct. 938 (1902), and *Tuchman* vs. *Welch,* 42 Fed. 548 (D. Kan. 1890).

of Section 2283. If, therefore, a judicial policy expressive of the Congressional purpose in Section 2283 is sufficient to require federal forebearance, it would seem that the Congressional mandate of Section 2283, in those limited situations where a state proceeding is pending and the statute directly applicable, ought to be of equal force even in the absence of such a policy. From another direction, it is equally clear that Section 1983 has not been seen as a springboard to hurdle the fact or the policy expressed in Section 2283;[21] thus, if ordinarily the judicial policy statement of the purposes of Section 2283 is of sufficient importance to preclude intervention through Section 1983, the Congressional mandate of the statute itself ought to be equally so in cases involving pending proceedings without reaching the question of judicial policy. See *Stefanelli* vs. *Minard*, 342 U.S. 117, 121 (1951); *Collins* vs. *Hardyman*, 341 U.S. 651, 657-58 (1951).

Section 1983 creates, generally, a cause of action and Section 1343(3) confers original — *but not exclusive* — jurisdiction in the district courts to hear this cause. Both statutes contemplate that the cause of action may involve the constitutionality of a state statute, and in this event where equitable

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[21] Except to the extent of the limited *Dombrowski* situation, where special circumstances so justified. But even here, the supervening interest of Section 1983, incorporating, as it did, first amendment considerations, was deemed sufficient to override only a judicial policy, and the question of whether it would have been sufficient to prevail against Section 2283 was carefully laid to one side. *Dombrowski* can be distinguished from a direct Section 2283 situation, on the basis of there being no state "proceeding." *Dombrowski* vs. *Pfister*, *supra*, 380 U.S. at 485 n. 2.

relief is sought, the three-judge court requirement of 28 U.S.C. §§ 2281 and 2284 indicates Congressional concern for the sensitivity of that confrontation when in a federal court. However, there is nothing in Section 1983 or Section 1343(3) which suggests that pending state proceedings should stop or cease during the pendency of the claim, and certainly no suggestion that they should be stayed. Section 2283 required an express statutory authorization for authorizing such extraordinary interference, and none can be found.

The court in *Amalgamated Clothing Workers of America* vs. *Richman Bros., supra,* 348 U.S. at 516, began to clarify this requirement by indicating that no specific reference to Section 2283 need be required in such an express authorization. This is a sensible conclusion, for the authorization, for instance, in the present Farm-Mortgage Act, 11 U.S.C. § 203(s)(2), although including no specific reference to Section 2283, is about as clear as possible with such language as " . . . stay all judicial and official proceedings in any court". Even if literal reference to Section 2283 is not a requirement, however, what must certainly be present to qualify as an "expressly authorized" exception is some statement that shows that Congress clearly took cognizance of the situation to which Section 2283 is addressed, that is, some statement of "legislative concern about procedural relations between the judicial systems", Note, 78 Harv. L. Rev. 994, 1051 (1965), and notwithstanding recognition of the problem, authorized measures to be taken which it had otherwise forbidden. That is true of those other express exceptions discussed above and would seem to be the least that is required in view of the long standing policy of Section 2283. That statute, after all, is a "clear-cut prohibition, qualified only by specifi-

cally defined exceptions", *Amalgamated Clothing Workers of America* vs. *Richman Bros., supra,* 348 U.S. at 516. It is therefore reasonable to require the same degree of clarity for the exception as for the prohibition, as, in fact, has been the practice of the Congress. This is perfectly consistent with the Court's application of its own policy of abstention in such matters where ". . . any doubt as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed . . ." *Atlantic Coast Line R. Co.* vs. *Engineers, supra,* 398 U.S. at 296, 297.

This view does no violence to Section 1983 or Section 1343(3). A grant of general equity jurisdiction — again not exclusive in the federal courts — is not at all inconsistent with a statutory limitation upon its exercise, *Moss* vs. *Jones, supra,* 288 F.2d at 344. Section 2283, expressing a basic federal concern for intervention in the conduct of state proceedings thus would operate only as a minor restriction in the scope of a Section 1983 cause of action, a restriction itself consistent with the fact that Section 1343(3) left concurrent jurisdiction of the cause of action in the state courts. *Baines* vs. *City of Danville, supra,* 337 F.2d at 589. The converse is quite different. If Section 1983 were construed as an express exception to Section 2283, it would constitute a revolutionary alteration of state-federal relations,[22] one which finds no basis in the language of Sections 1983 or 1343(3), which flies in the face of prior Congressional requirements for such exceptions, and which ignores the undoubted competency and jurisdiction of

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[22] This revolutionary change would be most acute in criminal matters. *Younger* vs. *Harris, supra.* See Note, *supra,* 74 Harv. L. Rev. at 739.

state courts to address the cause of action in question. Congress never intended Section 1983 to create an express exception to Section 2283, and this Court should not do so now. *Atlantic Coast Line R. Co.* vs. *Engineers, supra; Amalgamated Clothing Workers of America* vs. *Richman Bros., supra; Toucey* vs. *New York Life Insurance Co., supra;* Note, *supra,* 50 Va. L. Rev. 1404 (1964); Note, *supra,* 78 Harv. L. Rev. at 1051; Note, *supra,* 74 Harv. L. Rev. at 738.

CONCLUSION

For the reasons given, the Court should dismiss the appeal for want of jurisdiction under 28 U.S.C. § 1253, or, in the alternative, affirm the decision of the court below.

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IN THE

Supreme Court of the United States

No. 70-5058

DOROTHY LYNCH, et al.,

Appellants,

v.

HOUSEHOLD FINANCE CORPORATION, et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

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REPLY BRIEF FOR APPELLANTS

I

THIS COURT CORRECTLY NOTED PROBABLE JURISDICTION PURSUANT TO 28 U.S.C. §1253

The Brief for Household Finance Corporation and Deputy Sheriff Friedler entirely misconceives this Court's jurisdiction pursuant to 28 U.S.C. §1253. The wage-earners' appeal is properly before this Court since: (a) their cases were "required . . . to be heard and determined by a district court of three judges," 28 U.S.C. §1253; and (b) they appeal "from an order of a three-judge district court 'granting or denying . . . an interlocutory or permanent injunction.'"

Gunn v. University Committee, 399 U.S. 383, 386-87 (1970). Where these conditions are satisfied, this Court has §1253 jurisdiction regardless of the grounds upon which the three-judge court's decision rests. E.g., direct review granted pursuant to §1253 where three-judge courts dismissed for lack of subject-matter jurisdiction: *Baker v. Carr*, 369 U.S. 186 (1962); *Abernathy v. Carpenter*, 373 U.S. 241 (1963); *Doud v. Hodge*, 350 U.S. 485 (1956); *Florida Lime Growers v. Jacobsen*, 362 U.S. 73, 85 (1960); direct review where three-judge court dismissed on ground relief barred by 28 U.S.C. § 2283: *Cameron v. Johnson*, 390 U.S. 611 (1968); abstention: *Dombrowski v. Pfister*, 380 U.S. 479 (1965); *Zwickler v. Koota*, 389 U.S. 241 (1967); failure to exhaust administrative remedies: *Damico v. California*, 389 U.S. 416 (1967).

(a) Since the cases at Bar were required to be heard by a three-judge court, they are directly appealable pursuant to 28 U.S.C. §1253. The finance company's argument, that direct appealability depends upon "whether the order of dismissal *required* the participation of three judges," (Brief for Appellees, p. 8), was repudiated in *Florida Lime Growers v. Jacobsen, supra.* There Mr. Justice Frankfurter, dissenting but stating the view of the entire Court, explained:

> "I start with the proposition, as I understand the Court to do, that whether a case is one directly appealable here under 28 U.S.C. §1253 depends upon the complaint, and not upon the result in the District Court. If three judges are required to hear the claims which are made, then we have direct appellate jurisdiction. . . ." 362 U.S. at 89.[1]

[1] See, also, *Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 715 (1962); *U.S. v. Georgia P.S.C.*, 371 U.S. 285, 287-288 (1963) ("once [the three-judge court is] convened, the case can be disposed of below or here on any ground, whether or not it would have justified the calling of a three-judge court."); *Sterling v. Constantin*, 287 U.S. 378, 393-94 (1932) (the jurisdiction of the three-judge court "extends to every question involved . . . and enables the court to rest its judgment on the decision of such of the questions as in its opinion effectively dispose of the case.").

[continued]

Bizarre and unprecedented results flow from the finance company's contention that direct appealability depends upon the result in the district court. For example, a three-judge court is unnecessary for the determination of insubstantial constitutional questions. *Ex Parte Poresky*, 290 U.S. 30 (1933). Since the three-judge court in *Harper v. Virginia Board of Elections*, 240 F. Supp. 270 (E.D. Va. 1964), reversed, 383 U.S. 663, 665 (1966), found the constitutional issue indistinguishable from *Breedlove v. Suttles*, 302 U.S. 277 (1937), an appeal pursuant to the finance company's proposal would lie only in the court of appeals.

The three-judge court below held, assuming the existence of subject-matter jurisdiction, alternatively that 28 U.S.C. § 2283 barred an injunction. That holding is reviewable pursuant to § 1253, *Cameron v. Johnson*, *supra*. The finance company's argument must concede the propriety of direct review: a single judge lacks authority to determine whether § 2283 bars relief, in a case otherwise appropriate for a three-judge court. *Idlewild Bon Voyage Liquor Corp. v. Epstein*, *supra*. (See Brief for Appellees, p. 10 n. 3). The finance company's proposal would thus require review, by the court of appeals, of the district court's dismissal for lack of subject-matter jurisdiction; and, by this Court, of the dismissal on the ground that § 2283 barred relief. The absurdity of such a result demonstrates the speciousness of the finance company's contention.

Direct appealability depends, not upon the result in the district court, but upon *this* Court's determination as to "whether the three-judge courts in these cases were properly convened." *Moody v. Flowers*, 387 U.S. 97, 99 (1967).

On direct appeal, this Court has jurisdiction "over *all* grounds of attack against the statute." *Florida Lime Growers v. Jacobsen*, *supra*, 362 U.S. at 84 (emphasis in original). The finance company's contention (Brief for Appellees, p. 29) that this Court may not review the district court's denial of a declaratory judgment is thus erroneous. *Samuels v. Mackell*, 401 U.S. 66 (1971); *Perez v. Ledesma*, 401 U.S. 82, 89-90 (Stewart, J., concurring).

"Thus, the *correct* determination of whether the action should have been heard by three judges controls the disposition of the appeal—whether to the Supreme Court or the Court of Appeals." Comment, The Three-Judge District Court and Appellate Review, 49 Va. L. Rev. 538, 564 (1963) (emphasis added).[2] Alleging jurisdiction pursuant to 28 U.S.C. §1343(3), the wage-earners' complaints sought to enjoin sheriffs, deputy sheriffs, and constables of the State of Connecticut from levying garnishments pursuant to Section 52-329 of the Connecticut General Statutes on grounds of its unconstitutionality (App. p. 10, 23-24, 37-38). These allegations meet the requirements for a three-judge court, *Idlewild Bon Voyage Liquor Corp. v. Epstein, supra*, including the existence of subject-matter jurisdiction. (See Brief for Appellants, pp. 19-35). Since the three-judge court was properly convened, 28 U.S.C. § 2281, a direct appeal lies pursuant to §1253.

(b) The wage-earners' complaints were heard by a three-judge court which denied their prayer for a permanent injunction. Holding that 28 U.S.C. § 2283 barred the injunctive relief which the complaints requested (App. p. 10, 26), the court entered judgment "denying all relief sought by plaintiffs and dismissing the complaints" (App. p. 19). As conceded by the finance company, "the three-judge court itself entered the order of dismissal" (Brief for Appellees, p. 8).[3] The finance company's reliance on *Mengelkoch v. Industrial Welfare Commission*, 393 U.S. 83 (1969), and *Wilson v. City of Port Lavaca*, 391 U.S. 352 (1968), is thus misplaced. Courts there held that the requisites of three-

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[2] See, e.g., *Rorick v. Board of Commissioners*, 307 U.S. 208 (1939); *Jameson Co. v. Morgenthau*, 307 U.S. 171 (1939); *Bailey v. Patterson*, 369 U.S. 31 (1962); *Zemel v. Rusk*, 381 U.S. 1, 5-7 (1965); *Flast v. Cohen*, 392 U.S. 83, 88-89 (1968).

[3] The three-judge court was designated by the Chief Judge of the United States Court of Appeals for the Second Circuit (App. p. 17). In its judgment, the district court identified itself as a three-judge court (App. p. 19).

judge court jurisdiction were lacking, and orders of dismissal were entered by single district judges.[4]

The finance company's contention that § 1253 is unsatisfied, on the ground that no "hearing" preceded the denial of a permanent injunction (Brief for Appellees, p. 9), merits little comment. While no evidentiary hearing was conducted—as the wage-earners observe in their Brief (pp. 1, 6, 9)—the district court "heard" the causes, as stated in its judgment (App. p. 19), pursuant to briefs in the *Lynch* and *Toro* cases and oral argument in the *Toro* case.

Since the wage-earners appealed from the order of a properly convened three-judge court which denied their prayer for a permanent injunction, this Court has jurisdiction pursuant to 28 U.S.C. § 1253.

II

DEPUTY SHERIFFS, SHERIFFS AND CONSTABLES ARE PUBLIC OFFICIALS WHO, WHEN ENGAGED IN THE SERVICE OF PROCESS, ACT UNDER COLOR OF STATE LAW

Deputy Sheriff Barrett's Brief, submitted by the Attorney General of the State of Connecticut, denies that he acts under color of law when serving process (Brief of the Appellee, Charles H. Barrett, Deputy Sheriff of New Haven County, pp. 6-9). Curiously, that Brief itself details Connecticut's statutory scheme which regulates every facet of deputy sheriff Barrett's office. The sheriff, like his deputies, has certain statutory "duties" in serving process, and in

[4] This Court's decisions in *Wilson* and *Mengelkoch* repudiate the finance company's assertion that "whether a single judge or three judges ordered dismissal does not matter" (Brief for Appellees, p. 8). Those cases illustrate the well-established rule that no appeal lies to this Court from the decision of a single judge, even where three judges are in fact required. *Stratton v. St. Louis Ry.*, 282 U.S. 10, 15-16 (1930); *Schackman v. Arnebergh*, 387 U.S. 427 (1967); *Mengelkoch v. Industrial Welfare Commission*, No. 23,997, ___ F.2d ___ (9th Cir. 1971) (holding that three-judge court erroneously dissolved itself).

making such service is "carrying out the routine functions of his office. . . ." (Brief of Deputy Sheriff Barrett, pp. 6, 7). As Barrett notes, "service is generally made by the deputy sheriff" (Brief, p. 6) who, with the sheriffs and constables, is thus the State's agent in effectuating its statutory policies relating to service of writs and garnishment process.[5]

A sheriff, like his deputies, is an officer of the Executive branch of government. Connecticut Constitution, Article Fourth, Section 25 (1965). He is a

> "public official under trust from the state, which has invested him with a portion of its sovereign power to be exercised in the interest of the public." *Rogers v. Commissioners,* 18 Conn. Supp. 401, 403 (1953), affirmed, 141 Conn. 426, 106 A.2d 757 (1954).

The deputy sheriff performs his duties "under color of office," pursuant to "power given him by our statutes." *Coite v. Lynes,* 33 Conn. 109, 115, 113 (1865). All society has an interest in the proper performance of these duties, since

> "It is the wise policy of the law that its process shall be directed to known public officers, and the law sanctions departure from this policy only in cases of supposed necessity."
>
> *Kelley v. Kelley,* 83 Conn. 274, 276, 76 A. 291, 292 (1910).

An unbroken line of cases establishes that a public officer acts under color of law when he performs duties authorized by statute. See, e.g., *Screws v. United States,* 325 U.S. 91, 107-108, 111 (1945); *Griffin v. Maryland,* 378 U.S. 130, 135 (1964); *Dandridge v. Williams,* 397 U.S. 471 (1970); *Adickes v. Kress,* 398 U.S. 144 (1970). See, also, *Monroe v. Pape,* 365 U.S. 167 (1961); *Laprease v. Raymours Furniture Co.,*

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[5] In the state court suits against Mrs. Lynch and Mrs. Toro, only a public officer could have served process. An indifferent person would have been barred from serving process. Conn. Gen. Stat. §52-50.

315 F. Supp. 716 (N.D. N.Y. 1970); *Santiago v. McElroy*, 319 F. Supp. 284, 292 (E.D. Pa. 1970). In *United States v. Wiseman*, No. 35286, _____ F.2d _____ (2nd Cir. 1971), the second circuit held that private process servers acted under color of law in effecting service and signing affidavits of service. Surely, then, a public officer such as a deputy sheriff *a fortiori* serves process under color of state law.

III

THE DISTRICT COURT ERRONEOUSLY REFUSED JURISDICTION OF THE WAGE-EARNERS' COMPLAINTS

A. Appellees' Assertion, That 28 U.S.C. §1343 (3) Confers No Jurisdiction to Redress Deprivations of Property in Violation of the Fourteenth Amendment, is Wholly Unsupported.

The wage-earners' Brief demonstrates that 28 U.S.C. §1343(3) and 42 U.S.C. §1983 were enacted in order to redress the deprivation, by persons acting under color of state law, of Fourteenth Amendment rights. 17 Stat. 13 (1871). By its terms, the Act of 1871 makes actionable *all* such Fourteenth Amendment deprivations, whether of life, liberty, or property. The legislative history of that Act gives authoritative support to such an interpretation (Brief for Appellants, pp. 28-33). Since the enactment of 28 U.S.C. §1331 did not contract the scope of the Act of 1871, §§1983 and 1343(3) must today be accorded the full scope which their Framers intended (Brief for Appellants, pp. 33-35).

None of the appellees has produced the slightest evidence of a Congressional purpose to restrict, by enacting what is now 28 U.S.C. §1331 in 1875, the scope of federal jurisdiction pursuant to the Act of 1871. They have not refuted the fact that the Act of 1875 wrought a far-reaching expansion of federal authority which is wholly inconsistent with an intention to contract Civil Rights Act jurisdiction.

Instead, appellees assert that "traditionally, the Fourteenth Amendment and associated Civil Rights Acts were primarily regarded as protectors of civil, not property rights" (Brief for Appellees, p. 12). None of the authorities cited by the finance company provides any support for this proposition.[6] Indeed, the first reported case construing the Act of 1871 upheld the right of a corporate plaintiff to seek redress for an allegedly unconstitutional deprivation of its property. *Northwestern Fertilizing Co. v. Hyde Park*, 18 Fed. Cas. 393 (C.C. Ill. 1873).

Without citing any supporting authority, the finance company further asserts that 18 U.S.C. § 242–§ 1983's "criminal analogue," *Monroe v. Pape, supra*, 365 U.S. at 206 (Frankfurter, J., dissenting)–"has never been understood by this Court to apply to deprivations of property" (Brief for Appellees, p. 13 n. 5). However, § 242 is derived from § 2 of the Civil Rights Act of 1866, 14 Stat. 27. *United States v. Williams*, 341 U.S. 70, 83 (1951), overruled on other grounds, *United States v. Price*, 383 U.S. 787, 797-98 (1966). Section 1 of that Act guaranteed, as the finance company states, "the property rights of newly-freed Negro citizens" (Brief for Appellees, p. 14). Section 2 of the Act of 1866 provided criminal penalties for any violation of § 1. *Screws v. United States*, 325 U.S. 91, 98-100 (1945). In *United States v. Wiseman*, No. 35286, _____ F.2d _____ (2nd Cir.

[6] *Strauder v. West Virginia*, 100 U.S. 303 (1880), and *Ex Parte Virginia*, 100 U.S. 339 (1880), upon which the finance company relies, do not suggest that property rights are not "civil rights." Both cases emphasize Congress' undoubted power to enforce the Fourteenth Amendment's guarantee against unconstitutional deprivations of property as well as life and liberty. 100 U.S. at 310; 100 U.S. at 345-46. The finance company's Brief (p. 12) also relies upon a Comment by Eugene Gressman, 39 Mich. L. Rev. 284, 287 n. 13 (1940). This Comment, which cites no authority for its statement that the Fourteenth Amendment did not protect property rights, has clearly been repudiated by its author. See, Gressman, The Unhappy History of Civil Rights Legislation, 50 Mich. L. Rev. 1323 (1952), which documents the intimate relationship between the Civil Rights Act of 1866, 14 Stat. 27, and the Fourteenth Amendment.

1971), the second circuit affirmed convictions under § 242 against professional process servers who deprived alleged debtors of their property without due process by signing false affidavits of service. Sections 242 and 1983 "are in *'pari materia,'* meaning that they are meant to protect the same rights of the victim." *Wiltsie v. California Department of Corrections*, 406 F.2d 515, 517 (9th Cir. 1968). See Cong. Globe, 42nd Cong., 1st Session, App. 68 (Rep. Shellabarger); *Monroe v. Pape*, 365 U.S. at 185, and 212 n. 18 (Frankfurter, J., dissenting). Since the Ku Klux Act of 1871 was "patterned after what is now 18 U.S.C. § 242" (Brief for Appellees, p. 13 n. 5), §§ 1983 and 1343(3) must be construed to redress any violation, by persons acting under color of law, of the Fourteenth Amendment, see *United States v. Price, supra*, including unconstitutional deprivations of real and personal property.[7]

The contention (Brief for Appellees, p. 14) that *Carter v. Greenhow*, 114 U.S. 317 (1885), *Pleasants v. Greenhow*, 114 U.S. 323 (1885), and *Holt v. Indiana Mfg. Co.*, 176 U.S. 68 (1900), support the denial of jurisdiction is untenable. None of these cases refused jurisdiction pursuant to the "personal liberty–property rights" test. "Unique considerations," *Perez v. Ledesma*, 401 U.S. 82, 126, 127 (1971) (opinion of Brennan, J.), have caused federal courts to decline jurisdiction of cases, such as these, challenging the collection of a state's taxes (Brief for Appellants, pp. 33-34 n. 22).[8] More-

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[7] 18 U.S.C. § 241 guards the same rights as § 242. See *United States v. Williams*, 341 U.S. at 87-93 (Douglas, J., dissenting); *United States v. Price, supra*, 383 U.S. at 797, 802-803. Section 241 protects the right to perfect the property interest in a homestead claim. *United States v. Waddell*, 112 U.S. 76, 80 (1884).

[8] "Taxes being the sole means by which sovereignties can maintain their existence," *Bank of Commerce v. Tennessee*, 161 U.S. 134, 146 (1896), states have a fundamental interest in revenue collection. While the "civil rights" which §§ 1983 and 1343(3) protect, *Holt v. Indiana Mfg. Co., supra*, 176 U.S. at 72, included "property rights" (Brief for Appellants, p. 32 n. 21), a common view at the time of *Holt* was that "political rights" were excluded. *United States v. Arizona*, 91 S. Ct. 260, 284-85 n. 15 (1970) (opinion of Harlan, J.) ("political

over, these cases refused jurisdiction on the ground that a litigant was not deprived of a right "secured by the Constitution," within the meaning of §§ 1983 and 1343(3), unless the Constitution "directly secured" the right to the individual. *Carter v. Greenhow*, 114 U.S. at 322, 323; *Pleasants v. Greenhow*, *supra*; *Bowman v. Chicago and Northwestern Ry. Co.*, 115 U.S. 611, 615-16 (1885); Note, 52 Harv. L.Rev. 1136, 1138-9 (1939). Pursuant to this rationale *Holt*, relying exclusively on *Carter* and *Pleasants*, held that federal courts must refuse § 1343(3) jurisdiction when state laws were alleged to deny equal protection or to deprive individuals of their property without due process, 176 U.S. at 72. Compare, *United States v. Cruikshank*, 92 U.S. 542, 554-55 (1875); *United States v. Williams*, *supra*, 341 U.S. at 73, 77, overruled, *United States v. Price*, *supra*, 383 U.S. at 797-98; *Hague v. C.I.O.*, 307 U.S. 496 (1939) (opinion of Roberts, J.); *Slaughter-House Cases*, 83 U.S. 36, 73-9 (1873).[9] In *Monroe v. Pape*, *supra*, 365 U.S. at 171, this Court overruled this narrow interpretation of §§ 1983 and 1343(3), and held that rights under the entire Fourteenth Amendment were "secured by the Constitution." Agreeing with the Court, Mr. Justice Frankfurter stated in his dissent that § 1983's

> "protection of 'rights, privileges or immunities secured by the Constitution' encompasses what 'due process of law' and 'the equal protection of the laws' of the Fourteenth Amendment guarantee against action by the States." 365 U.S. at 205.[10]

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rights" are "rights arising from governmental organization"); *Giles v. Harris*, 189 U.S. 475, 497 (1903) (Harlan, J., dissenting). A federal court's refusal of § 1343(3) jurisdiction in a challenge to a state's tax law, at the time of *Holt*, could thus rest on the ground that only "political rights" were at issue.

[9] By contrast, the test for whether an action was one "arising under" the constitution and laws, within the meaning of 28 U.S.C. § 1331, was far easier for a litigant to meet. *Starin v. New York*, 115 U.S. 248, 257 (1885).

[10] The legislative history of the Act of 1871 demonstrates that §§ 1983 and 1343 provide redress for any violation, by persons acting

Appellees' reliance on *Holt*, *Carter* and *Pleasants* is thus inapposite.

Congress enacted §§ 1983 and 1343(3) in furtherance of its power to enforce the Fourteenth Amendment. Nothing in the language of those statutes suggests that Congress failed fully to exercise its constitutional authority to remedy deprivations of life, liberty and property which violate the Fourteenth Amendment. The legislative history of §§ 1983 and 1343(3) provides not the slightest basis for departing from their plain meaning. If such a deviation is deemed desirable, however, Congress is the branch of our government which is empowered so to decide. *United States v. Guest*, 383 U.S. 745, 749 (1966); *United States v. Price*, *supra*, 383 U.S. at 789, 806-807; *Jones v. Mayer Co.*, 392 U.S. 409, 437 (1968); *Griffin v. Breckenridge*, 91 S.Ct. 1790, 1795, 1796 (1971). Courts, by contrast, "are not at liberty to seek ingenious analytical instruments," *United States v. Price*, *supra*, 383 U.S. at 801, or "filtering mechanisms" (Brief for Appellees, p. 15), for denying to §§ 1983 and 1343(3) the interpretation which Congress most reasonably intended.

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under color of state law, of the Fourteenth Amendment. E.g., Cong. Globe, 42nd Cong., 1st Sess. 244 (message from President Grant); 332-34 (Mr. Hoar); 369-70 (Mr. Monroe); 375-76 (Mr. Lowe); 429 (Mr. Beatty); 448 (Mr. Butler); 459-61 (Mr. Coburn); 475-76 (Mr. Dawes); 482-83 (Mr. Wilson); 501 (Mr. Frelinghuysen); 568 (Mr. Edmunds); 577 (Mr. Carpenter); 607 (Mr. Pool); 650-51 (Mr. Sumner); 666 (Mr. Spencer); App. 50 (Mr. Kerr); App. 68, 69 (Mr. Shellabarger); App. 81-85 (Mr. Bingham); App. 216 (Mr. Thurman); App. 310 (Mr. Maynard).

B. Allegations That a Public Official Has Deprived A Plaintiff of Fourteenth Amendment Rights Establish Federal Jurisdiction Pursuant to 28 U.S.C. § 1343(3).

Despite some lower-court interpretations of Justice Stone's concurring opinion in *Hague v. C.I.O.*, 307 U.S. 496, 518 (1939), this Court has never adopted the "personal liberty—property rights" test. See, *Monroe v. Pape*, 365 U.S. at 171 and 205. In fact, recent decisions emphasize this Court's disregard of the test. E.g., *Java v. Department of Social Services*, 91 S.Ct. 1347 (1971); *Rosado v. Wyman*, 397 U.S. 397, 402-403, 422-23 (1970); *Rinaldi v. Yeager*, 384 U.S. 305 (1966). Repudiation of the test would not, therefore, unsettle any established doctrine. To the contrary, its express rejection would clarify the jurisdictional basis of this Court's decisions which conflict with the test.[11]

Appellees' argument that welfare benefits have a "special § 1343(3) status" (Brief for Appellees, p. 21) which is denied wage-earners surely distorts the legal history of this past decade. Until recently, courts held that the denial of welfare benefits, unlike the denial of more traditional property interests, was not even justiciable. E.g., *Smith v. Board of Com-*

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[11] In *Eisen v. Eastman*, 421 F.2d 560, 566 n. 10 (2nd Cir. 1969), Judge Friendly suggested that adherence to the "personal liberty-property rights" formula would bar from the federal courts many actions alleging the unconstitutionality of a state's welfare program. This Court, of course, has affirmed § 1343(3) jurisdiction of every welfare case which it has reviewed, even when the welfare recipient claimed an unconstitutional denial of only three to four dollars monthly of her "property." *Rosado v. Wyman*, 397 U.S. 397, 402-403, 422-23 (1970); *Wyman v. Rothstein*, 398 U.S. 275 (1970), vacating and remanding, 303 F. Supp. 339 (S.D. N.Y. 1969); *Wyman v. Boddie*, 91 S.Ct. 2168 (1971), affirming, 434 F.2d 1207 (2nd Cir. 1970); *Wyman v. Rosado*, 91 S.Ct. 2169 (1971), affirming, 437 F.2d 619 (2nd Cir. 1970). See, also, *Damico v. California*, 389 U.S. 416 (1967); *Snell v. Wyman*, 393 U.S. 323 (1969); *King v. Smith*, 392 U.S. 309, 312 n. 3 (1968); *Shapiro v. Solman*, 396 U.S. 5 (1969), affirming, 300 F.Supp 409 (D. Conn. 1969); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Dandridge v. Williams*, 397 U.S. 471 (1970); *Lewis v. Martin*, 397 U.S. 552 (1970).

missioners, 259 F. Supp. 423 (D. D.C. 1966), affirmed, 380 F.2d 632 (D.C. Cir. 1967). See, generally, Reich, The New Property, 73 Yale L.J. 733 (1964). This Court has now accepted the designation of welfare benefits as "property," *Goldberg v. Kelly*, 397 U.S. 254, 262 n. 8 (1970); *Graham v. Richardson*, 91 S.Ct. 1848, 1853 (1971), and has affirmed jurisdiction of all constitutionally-based challenges to public welfare programs. *Supra*, note 11. However, this Court has rejected the contention that welfare benefits enjoy a specially privileged constitutional position distinct from other types of property. *Dandridge v. Williams*, 397 U.S. 471 (1970). It would be anomalous indeed if the working poor were now denied access to the federal courts for the defense of their property on the ground that welfare recipients enjoy a peculiarly favored § 1343(3) status.[12]

If anything, the historical evidence indicates a special congressional regard for the working poor. In seeking support for the Acts of Reconstruction, political advocates frequently minimized distinctions between white working men and the recently emancipated Negroes. The Fourteenth Amendment was essential to secure the rights of both. Senator Henry Wilson of Massachusetts explained:

> "We have advocated the rights of the black man, because the black man was the most oppressed type

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[12] Appellees seek to distinguish the welfare cases from the cases at Bar by arguing that welfare benefits are "dispensed as the result of a legislative determination that, without such assistance, welfare recipients cannot exercise their fundamental constitutional rights" (Brief for Appellees, p. 21). However, appellees cite no such legislative determination in support of this assertion. Nor do they refer to any decision of this Court expressing this rationale as the ground for accepting jurisdiction in welfare cases. A three to four dollar monthly benefit loss, which has been the subject of some welfare litigation, can hardly be said to directly affect the exercise of constitutional rights. See, note 11, *supra*. That welfare benefits have their origin in a "legislative determination" is not unusual. The Framers of the Fifth and Fourteenth Amendments made a "legislative determination" that property is essential to the exercise of constitutional rights (Brief for Appellants, p. 32 n. 21).

> of the toiling men of this country. . . . The man who is the enemy of the black laboring man is the enemy of the white laboring man the world over. The same influences that go to keep down and crush down the rights of the poor black man bear down and oppress the poor white laboring man." Stampp, *The Era of Reconstruction*, 102 (1965).

See, also, Brief for Appellants, p. 24; *Corfield v. Coryell*, 6 Fed. Cas. 546, 551 (C.C. Pa. 1823).

Section 1331 would hardly be rendered "virtually meaningless" (Brief of Deputy Sheriff Barrett, p. 12) by repudiation of the "personal liberty–property rights" test. E.g., *Bivens v. Six Unknown Named Agents*, 91 S.Ct. 1999 (1971). Clearly, Congress never intended that § 1331 should bar federal courts from entertaining suits which are plainly authorized, without regard to amount in controversy, by another jurisdiction-conferring statute. E.g., 28 U.S.C. §§ 1337, 1338; *Ames v. Hager*, 36 Fed. Rep. 129 (C.C. Cal. 1888). Compare, *Sanders v. Dobbs House, Inc.*, 431 F.2d 1097 (5th Cir. 1970); *Scott v. Young*, 421 F.2d 143 (4th Cir. 1970) (Scope of 42 U.S.C. § 1981 undiminished by enactment of Civil Rights Act of 1964). See, also, *United States v. Jackson*, 302 U.S. 628 (1938); Brief for Appellants, pp. 33-35, 20 n. 11.

Nor would express rejection of the "personal liberty-property rights" test unduly overburden the federal courts. Cases challenging the constitutionality of state tax laws would continue to be barred by 28 U.S.C. § 1341 (Brief for Appellants, pp. 33-34 n. 22). Indeed, many of the cases which appellees cite, purportedly to demonstrate the vitality of the test, are such tax cases (see Brief for Deputy Sheriff Barrett, p. 14; Brief for Appellees, pp. 16-17). Since this Court has not adopted the test, see note 11, *supra*, a "flood" of cases will not result from its express rejection. Additionally, some cases in which § 1343(3) jurisdiction has been refused must be entertained by the federal courts under other jurisdictional statutes. *Eisen v. Eastman*, 421 F.2d 560, 566-67 (2nd Cir. 1969). Finally, the inherent uncer-

tainty of the "personal liberty-property rights" test has itself engendered much needless litigation (Brief for Appellants, pp. 22-27).[13]

The finance company's contention, that federal district courts are "overburdened by the claims of civil rights litigants" (Brief for Appellees, p. 23), is uninformed. Although litigation involving federal civil rights is increasing, such actions comprised only 4.6% of the suits instituted in district courts during fiscal year 1970. Administrative Office of the United States-Courts, 1970 Report, p. II-31. This figure equals the number of labor relations cases filed, and is one-fourth the number of prisoner petitions. By contrast, 19.6% involved actions on contracts. 10.7% of all cases filed in the district courts involved motor vehicle torts, lacking any federal coloration other than the parties' diverse citizenship. *Id.* If federal courts are carrying an excessive workload, the remedy surely does not lie in limiting federal civil rights actions. Indeed, recent proposals have urged that the district courts should entertain all cases involving questions of federal law, regardless of jurisdictional amount. American Law Institute, *Study of the Division of Jurisdiction between State and Federal Courts*, 24-5, 172-76 (1969).

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[13] *Compare, McGuire v. Sadler*, 337 F.2d 902 (5th Cir. 1964) (§ 1343(3) jurisdiction in suit to rescind and enjoin sale of public land), *with, McManigal v. Simon*, 382 F.2d 408 (7th Cir. 1967) (no § 1343(3) jurisdiction over dispute whether corporation should donate law library to county). *Compare, Santiago v. McElroy*, 319 F. Supp. 284 (E.D. Pa. 1970) (§ 1343(3) jurisdiction to determine whether distress seizures of property by constables violated due process), *with, Howard v. Higgins*, 379 F.2d 227 (10th Cir. 1967) (no § 1343(3) jurisdiction where sheriff allegedly took $500 of prisoner's property). "Experience teaches that the wiser and better practice is for the court to assume jurisdiction for the purpose of determining whether the complaint states a claim upon which relief can be granted." *Joe Louis Milk Co. v. Hershey*, 243 F. Supp. 351, 354-55 (N.D. Ill. 1965). E.g., *Love v. Navarro*, 262 F. Supp. 520, 522 (C.D. Cal. 1967) (§ 1343(3) jurisdiction over controversy as to construction of road; complaint dismissed for failure to state claim upon which relief could be granted).

C. Since Summary Garnishment of Wage-Earners' Accounts Unconstitutionally Deprives Them of Significant Personal Liberties, the District Court Erred in Refusing Jurisdiction Pursuant to 28 U.S.C. § 1343(3).

The wage-earners' Brief demonstrates that summary garnishment unconstitutionally deprives wage-earners of significant personal liberties (Brief for Appellants, pp. 22-27). If this Court upholds the "personal liberty-property rights" test, therefore, the district court nonetheless erred in refusing jurisdiction.

Prejudgment garnishment summarily deprives wage-earners of the means to subsist, impedes their access to courts of law for the resolution of controversies, damages their reputations, creates the possibility of criminal prosecution, and impairs their ability to contract for the purchase of family necessities and to earn a living (Brief for Appellants, pp. 22-27, 13-18). As the Rev. Theodore M. Hesburgh, Chairman of the United States Commission on Civil Rights, recently stated, civil rights are "mere shadows" unless the economic rights of the underprivileged are secured. New York Times, May 14, 1971, p. 32. Surely summary garnishment effects a serious denial of personal liberty. See, *Osmond v. Spence*, 39 L.W. 2660 (D. Del. 1971) (three-judge court).

The garnishment of these wage-earners' accounts wreaks exactly the same havoc upon the working poor as in *Sniadach v. Family Finance Corporation*, 395 U.S. 337 (1969). There this Court recognized that summary garnishment "may as a practical matter drive a wage-earning family to the wall." *Id.* at 341-42. The only possible difference between the plights of these wage-earners and Christine Sniadach is that the latter's garnishee was her employer.[14] This distinction is surely without significance:

[14] Indeed, as the finance company's brief states, Mrs. Lynch's garnishee was "a credit union maintained by Mrs. Lynch's employer" (Brief for Appellees, p. 2). Like Christine Sniadach, these wage-earners relied upon their garnished wages to meet the common necessaries of life.

> "[The] root requirement [of due process is] that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971).

As in *Sniadach*, the summary garnishment of wage-earners' accounts may force working persons to abandon defenses and settle cases without any judicial mediation. (Brief for Appellants, pp. 13-15, 14 n. 6). In order to exercise his right to a day in court, the alleged debtor must forego the use of property which is necessary for subsistence. Compare, *Goldberg v. Kelly, supra*, 397 U.S. at 264. Access to the courts, and the availability of fair procedures, are of profound importance in our society's hierarchy of values. *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 171-72 (1951) (Frankfurter, J., concurring); *United Transportation Union v. Michigan Bar*, 91 S. Ct. 1076 (1971). Their denial constitutes the deprivation of a fundamental liberty. *Boddie v. Connecticut, supra*, 401 U.S. at 374-5.

IV

28 U.S.C. § 2283 IS NOT A BAR TO RELIEF.

A. Appellees' Assertion, that Summary Garnishment Is A Proceeding in a State Court, Is Erroneous

Appellees have urged this Court to rule that summary garnishment is a "proceeding in a State court," within the meaning of 28 U.S.C. §2283. They rely primarily upon *Hill v. Martin*, 296 U.S. 393 (1935). Appellees made an identical argument to the three-judge court which, in failing even to cite *Hill*, apparently deemed it inapposite. Indeed, the three-judge court did not hold that summary garnishment is a state court proceeding. The court recognized that "no court order is required" to garnish a wage-earner's account

(App. p. 23 n. 2).[15] As the wage-earners explain (Brief for Appellants, pp. 13-18, 35-38), garnishment in Connecticut occurs "before and without any judicial proceeding," *Coffin Bros. v. Bennett*, 277 U.S. 29, 31 (1921), and remains fully effective without any "actions by the Court [or] by its ministerial officers." *Hill v. Martin, supra*, 296 U.S. at 403 (see Brief for Appellants, p. 37 n. 24).[16]

Summary garnishments are thus not "proceedings" in the Connecticut courts. Moreover, the wage-earners in this appeal have no possibility of instituting proceedings which would lead to reduction or release of their garnishments. The finance company concedes that "state courts may have no power to release good faith garnishments except to the extent that they are excessive" (Brief for Appellees, p. 36). However, state courts are barred from releasing even a garnishment which is levied as an abuse of process, *Csakany v. Takacs*, 143 Conn. 485, 123 A.2d 764 (1956), upon exempt property. *Potter v. Appleby*, 136 Conn. 641, 73 A.2d 819 (1950). The court has no authority to inquire into the probable validity of the creditor's claim, or whether special circumstances warrant provisional security for an alleged creditor. *Sachs v. Nussenbaum*, 92 Conn. 682, 689, 104 A. 393, 395 (1918). As the District Court of Connecticut recently explained:

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[15] Appellees do not claim that the three-judge court held summary garnishment to be a proceeding in a state court. Nor do appellees refute the wage-earners' demonstration that, under Connecticut law, garnishment is levied prior to institution of the *in personam* suit (Brief for Appellants, p. 36); that garnishment may occur nearly two months before a creditor must docket his suit in the state court; and that distraught debtors may thus be forced to abandon their defenses and settle cases without any judicial mediation (Brief for Appellants, pp. 14, 17 n. 8, 18 n. 9).

[16] *Hill* ruled, in circumstances wholly inapplicable to the cases at Bar, that § 2283 prohibited federal courts from enjoining collection of a judgment rendered pursuant to lengthy state court proceedings. See *Atlantic Coast Line R. Co. v. Engineers*, 398 U.S. 281, 287 (1970); *Toucey v. New York Life Insurance Co.*, 314 U.S. 118, 136 (1941).

> "Prior to the termination of the litigation, an attachment may be reduced or dissolved *only* upon a showing that the attachment is excessive, § 52-302, or upon substitution of a bond with surety, § 52-304," *Black Watch Farms v. Dick*, 323 F. Supp. 100, 101-2 (D. Conn. 1971) (emphasis added).

Since the garnishments in the cases at Bar are not excessive within the meaning of § 52-302, and since the wage-earners cannot afford a bond, they have no grounds for invoking the state court's jurisdiction.[17] (See Brief for Appellants, pp. 13-18).

The appellate division of Connecticut's circuit court, where the in personam actions against Mrs. Lynch and Mrs. Toro are pending, has unequivocally ruled that the circuit court lacks authority to dissolve a garnishment on the ground that it was levied unconstitutionally; and that the refusal to dissolve a garnishment on grounds of unconstitutionality is not appealable. *Michael's Jewelers v. Handy*, 6 Conn. Cir. 103, 266 A.2d 904 (1969) (Brief for Appellants, pp. 15-16).

Where no court order is necessary to freeze a wage-earner's assets from the date of levy until final disposition of the suit, and where an alleged debtor may not institute state court proceedings with respect to summarily-levied garnishments, a Connecticut garnishment can hardly be deemed a "proceeding in a State court." [18]

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[17] In order to challenge an excessive garnishment, or to substitute a bond, the alleged debtor must commence a proceeding distinct from the creditor's suit, *Sachs v. Nussenbaum, supra*, by serving process upon the officer who attached or garnished his property, and upon the creditor or his attorney. Conn. Gen. Stats. §§ 52-301, 52-306; 1963 *Connecticut Practice Book*, Forms 532, 534.

[18] Connecticut appears to be the only state authorizing an attorney for an alleged creditor to garnish or attach property without any action by a judge or clerk of court. Other states require the writ to be issued by a judge or clerk of court. E.g., Hawaii Stat. § 651-3, 652-2, 633-1; Idaho Code § 8-502; Mass. Laws C. 223 §§ 16, 20, 42, C. 246; Mont. Rev. Code § 93-4302. See, also, N.H. Laws § 509.2 *et*

B. The Record in This Appeal Fails To Support Appellees' Contention that 28 U.S.C. § 2283 Barred the Award of Any Relief.

Appellees wholly ignore the wage-earners' argument that no evidence in the record justified the district court's conclusion that enjoining summary garnishments would "substantially interfere" with state court proceedings (Brief for Appellants, pp. 40-42). More than fifty years ago, the Connecticut Supreme Court held that the "progress of the pending suit . . . was not concerned with or in any way affected by" the dissolution of a garnishment. *Sachs v. Nussenbaum, supra,* 92 Conn. at 686, 104 A. at 394.

Appellees' argument that no plaintiff or defendant class can be defined should properly be made to the district court on remand, at a hearing pursuant to Federal Rule 23(c).[19] Similarly, this Court cannot affirm, on a barren

seq. (writ must bear the seal of court, teste of justice of the court, and facsimile of clerk's signature.) As a condition to issuance of the writ, the alleged creditor must generally post a bond, e.g., Ariz. Rev. Stat. § 12-1524; Calif. Code of Civil Proc. § 539; Wis. Laws § 266.06; New York C.P.L.R. 6212; and must frequently demonstrate the existence of special circumstances requiring his protection by an attachment or garnishment, e.g., Minn. Stat. 571.41; New York C.P.L.R. § 6201; Ga. Code §§ 8-101, 8-501; Vt. Rules Civil Proc. §§ 4.1, 4.2; Ala. Code, Title 7, §§ 846-47.

[19] As the wage-earners explain (Brief for Appellants, p. 40 and n. 26), the district court's erroneous jurisdictional ruling was its exclusive reason for stating that no plaintiff class could be defined. The definition of the class in the complaints (App. p. 6, 34) is sufficient to satisfy Rule 23. *Swarb v. Lennox,* 314 F. Supp. 1091 (E.D. Pa. 1970); *Eisen v. Carlisle and Jacquelin,* 391 F.2d 555, 561-63 (2nd Cir. 1968); Wright, *Class Actions,* 47 F.R.D. 169 (1969); 2 Barron and Holtzoff, *Federal Practice and Procedure* (1961), 1969 Pocket Parts, pp. 77-78. See, also, *Vasquez v. Superior Court,* 94 Cal. Reptr. 796, 484 P.2d 964 (Supreme Court, 1971).

Appellees' arguments as to the alleged lack of definition of the defendant class are similarly groundless. *Washington v. Lee,* 263 F. Supp. 327, 330-31 (M.D. Ala. 1966), affirmed, 390 U.S. 333 (1968). Deputy sheriffs adequately represent the class of process servers. See note 5, *supra,* and accompanying text. Not only is the class of

record, the district court's denial of future injunctive relief. The record indicates that persons claiming to be creditors of the wage-earners may sue them, exposing them to the risk of summary garnishment prior to suit (App. p. 44, 46-47). On remand, counsel for the wage-earners are prepared to move for the intervention of other persons who similarly may be sued in the Connecticut courts. A hearing in the district court will demonstrate that irreparable harm will occur to these persons absent injunctive relief, since garnishments are a major cause of personal bankruptcies, particularly in a period of recession; that Household Finance Corporation and other major Connecticut creditors routinely garnish the scarce assets of their alleged debtors prior to suing them; and that the pressure of garnishment forces alleged debtors to settle cases without any opportunity for a judicial determination of the validity of creditors' claims. *Sniadach v. Family Finance Corp., supra.*[20]

Finally, appellees' argument that § 2283 bars the award of declaratory as well as injunctive relief ignores the plain language of § 2283 and the historical context in which § 2283 was enacted. See, Note, Federal Court Stays of State Court Proceedings: A Re-Examination of Original Congressional Intent, 38 U. Chi. L. Rev. 612 (1971). See, also, *Samuels v. Mackell, supra; Perez v. Ledesma, supra* (opinion of Brennan, J.).

Defendants clearly identifiable, but their financial stake in serving writs ensures that they will vigorously defend the constitutionality of Conn. Gen. Stat. § 52-329.

[20]Since Mrs. Toro is entitled to future injunctive relief, her case is not moot. The district court, it may be noted, did not hold that Mrs. Toro's complaint should be dismissed on grounds of mootness (App. p. 22 n. 1). Mrs. Toro's complaint also requested that the garnished funds be returned to her "without cost" (App. p. 38). She has not been reimbursed the $10.00 "legal expenses" which her account was charged as the result of the garnishment (App. pp. 42,43).

V

NO STATE COURT REMEDIES ARE AVAILABLE TO CONNECTICUT WAGE-EARNERS

Household Finance Corporation and Deputy Sheriff Friedler contend that state court remedies are adequate for contesting the constitutionality of summary garnishments (Brief for Appellees, pp. 35-38). This argument, which the Attorney General of Connecticut has not advanced on behalf of Deputy Sheriff Barrett, is wholly speculative and unfounded.

Michael's Jewelers v. Handy, supra, forecloses a constitutional challenge to summary garnishment in Connecticut's circuit court. The finance company states that the decision in *Michael's Jewelers* "was apparently not appealed further" (Brief for Appellees, p. 37). However, no appeal lies as of right to the Connecticut Supreme Court from the appellate division of the circuit court. The Supreme Court reviews a judgment of the appellate division only when the latter certifies that a substantial issue of law warrants the Supreme Court's consideration; or where the Supreme Court itself decides, in its discretion, that review is warranted. 1963 *Connecticut Practice Book* §§ 740-742. In *Michael's Jewelers v. Handy,* the appellate division failed to certify the existence of a substantial issue of law. See 1963 *Connecticut Practice Book* §§ 751-756. Although the alleged debtor in *Michael's Jewelers* filed a petition for certification in the Connecticut Supreme Court, the petition was never acted upon since the creditor withdrew the underlying *in personam* action (see Brief of appellants in reply to appellees' Motion to Affirm and Motion to Dismiss or Affirm, at p. 2 n. 3).

The court of common pleas and the superior court are, like the appellate division, bound by the Connecticut Supreme Court's decisions. Those decisions bar courts from dissolving or reducing a garnishment except where explicitly authorized by statute (Brief for Appellants, pp. 14-16). The finance company has offered no authority for the proposition that

the court of common pleas and the superior court are any more apt to deviate from those decisions than was the appellate division in *Michael's Jewelers*.

The Connecticut Supreme Court is the only state forum offering the bare possibility that wage-earners might receive a full hearing as to the constitutionality of prejudgment garnishment. But this Court has never required litigants—particularly indigent litigants—to exhaust all state remedies, no matter how time-consuming or speculative, as a condition of vindicating their federal constitutional rights in a federal forum. E.g., *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934); *Lane v. Wilson*, 307 U.S. 268 (1939); *Monroe v. Pape*, 365 U.S. 167 (1961); *Wisconsin v. Constantineau*, 400 U.S. 433 (1971).

Despite these obvious barriers to redress, the finance company chides the wage-earners for not resorting to the state courts as Christine Sniadach did in Wisconsin (Brief for Appellees, pp. 37-8). The finance company neglects the facts that Wisconsin courts possess the power, denied to Connecticut courts, to dismiss a garnishment where abuses come to the court's attention, *Sniadach v. Family Finance Corp.*, 37 Wis.2d 163, 173-4, 154 N.W.2d 259, 265 (1967), reversed on other grounds, 395 U.S. 337 (1969); that no prior decisions of the Wisconsin Supreme Court barred lower courts from dissolving a garnishment on grounds of unconstitutionality (see memorandum of decision of Wisconsin circuit court, pp. 37, 39 of Appendix filed with this Court in *Sniadach*); and that the refusal to dissolve a garnishment in Wisconsin is, unlike Connecticut, appealable. *Mahrle v. Engle*, 261 Wis. 485, 53 N.W.2d 176 (1952); memorandum of decision of Wisconsin circuit court, *supra*; Wis. Laws §§ 274.09, 274.33.

The finance company utterly ignores the substantial monetary barriers which Connecticut has erected to bar indigent persons from redress in its courts. Unless the party appealing to the Connecticut Supreme Court pays a forty-five dollar entry fee, a fifty dollar record fee, and gives security

in the amount of $150.00, "the appeal shall be void and of no effect," 1963 *Connecticut Practice Book* § 602; Conn. Gen. Stats. §§ 52-259, 52-269. Costs of transcripts must also be paid. 1963 *Connecticut Practice Book* § 608A.

A party seeking redress in the superior court must pay an entry fee of forty-five dollars; in the court of common pleas, the fee is thirty dollars. Conn. Gen. Stats. § 52-259. Trial fees and costs, which the legislature has now increased, are substantial. Conn. Gen. Stat. § 52-257, as amended, P.A. 302 (effective October 1, 1971). Neither of these courts may render a declaratory judgment unless, as a jurisdictional requirement, "all persons having an interest in the subject matter of the complaint are parties to the action or have reasonable notice thereof." 1963 *Connecticut Practice Book*, § 309(d). The prohibitive cost of serving process upon such persons or of notifying them, *National Transportation Co. v. Toquet*, 123 Conn. 468, 481-5, 196 A. 344, 349-51 (1937), renders a declaratory action a will-o'-the wisp to low-income wage earners.[21] Wisconsin, where Christine Sniadach litigated her claims, requires relatively low entry fees, e.g., Wis. Laws §§ 271.21, 251.90, and permits indigent persons to proceed *in forma pauperis*. Wis. Laws §§ 271.29.[22]

[21] The circuit court is prohibited from rendering a declaratory judgment. Conn. Gen. Stat. § 52-29. In order to transfer a declaratory action from the circuit court to the court of common pleas or superior court, as suggested by the finance company (Brief for Appellees, p. 37), a thirty dollar fee must be paid to the clerk of the circuit court. Additionally, the usual entry fee must be paid to the clerk of the superior court or common pleas court. Conn. Gen. Stat. § 52-32.

[22] 1963 *Conn. Practice Book* § 28A (effective September 1, 1971), establishes the procedure to be followed where a plaintiff claims a right to proceed *in forma pauperis*. See, *Boddie v. Connecticut, supra*. On July 8, 1971, Governor Meskill of Connecticut vetoed Public Act No. 714, "An Act Concerning Waiver of Court Fees and Costs Payable to Indigent Persons." His veto message stated:

> "In my opinion this legislation gives greater latitude to the court to waive payment of costs and fees and expenses of services than is required by the most recent Supreme Court decision.

In Connecticut, therefore, no remedies are available for challenging the constitutionality of summarily-levied garnishments. Where the alleged debtor is indigent, the finance company's contention that such remedies exist is frivolous.

CONCLUSION

The district court had jurisdiction over the wage-earners' complaints. Neither injunctive, declaratory, nor future injunctive relief was barred by 28 U.S.C. §2283. This Court, pursuant to 28 U.S.C. §1253, should reverse the judgment of the district court.

Respectfully submitted,

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"I would prefer to be limited by the opinion of the Supreme Court concerning the right of an indigent to litigate without the payment of fees."

Letter of Governor Thomas Meskill to Hon. Gloria Schaffer, Secretary of the State.

Syllabus 405 U. S.

LYNCH ET AL. v. HOUSEHOLD FINANCE CORP. ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

No. 70-5058. Argued December 7, 1971—Decided March 23, 1972

Appellee Household Finance Corp. sued appellant Lynch in state court alleging nonpayment of a promissory note, and, prior to serving her with process, garnished her savings account under Connecticut law authorizing summary pre-judicial garnishment. Appellant challenged the validity of the state statutes under the Equal Protection and Due Process Clauses of the Fourteenth Amendment, and sought declaratory and injunctive relief under 42 U. S. C. § 1983 and its jurisdictional counterpart, 28 U. S. C. § 1343 (3). The District Court dismissed the complaint on the grounds (1) that it lacked jurisdiction under § 1343 (3), as that section applies only if "personal" rights, as opposed to "property" rights are impaired, and (2) that relief was barred by 28 U. S. C. § 2283, proscribing injunctions against state court proceedings. *Held:*

1. There is no distinction between personal liberties and proprietary rights with respect to jurisdiction under 28 U. S. C. § 1343 (3). Pp. 542–552.

(a) Neither the language nor the legislative history of that section distinguishes between personal and property rights. Pp. 543–546.

(b) There is no conflict between that section and 28 U. S. C. § 1331, and the legislative history of § 1331 does not provide any basis for narrowing the scope of § 1343 (3) jurisdiction. Pp. 546–550.

(c) It would be virtually impossible to apply a "personal liberties" limitation on § 1343 (3) as there is no real dichotomy between personal liberties and property rights. It has long been recognized that rights in property are basic civil rights. Pp. 550–552.

2. Prejudgment garnishment under the Connecticut statutes is levied and maintained without the participation of the state courts, and thus an injunction against such action is not barred by the provisions of 28 U. S. C. § 2283. Pp. 552–556.

318 F. Supp. 1111, reversed and remanded.

STEWART, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, and MARSHALL, JJ., joined. WHITE, J., filed a dissenting opinion, in which BURGER, C. J., and BLACKMUN, J., joined, *post*, p. 556. POWELL and REHNQUIST, JJ., took no part in the consideration or decision of the case.

David M. Lesser argued the cause for appellants. With him on the briefs was *William H. Clendenen, Jr.*

Richard G. Bell argued the cause for appellees. With him on the brief for appellees Household Finance Corp. et al. were *Charles A. Pulaski, Jr.*, and *David W. Goldman*. *Robert K. Killian*, Attorney General of Connecticut, and *Raymond J. Cannon* and *Robert L. Hirtle, Jr.*, Assistant Attorneys General, filed a brief for Barrett, Deputy Sheriff.

MR. JUSTICE STEWART delivered the opinion of the Court.

In 1968, the appellant, Mrs. Dorothy Lynch, a resident of New Haven, Connecticut, directed her employer to deposit $10 of her $69 weekly wage in a credit union savings account. In 1969, appellee Household Finance Corp. sued Mrs. Lynch for $525 in a state court, alleging nonpayment of a promissory note. Before she was served with process, the appellee corporation garnished her savings account under the provisions of Connecticut law that authorize summary pre-judicial garnishment at the behest of attorneys for alleged creditors.[1]

The appellant then brought this class action in a federal district court against Connecticut sheriffs who levy on bank accounts and against creditors who in-

[1] The garnishment was levied pursuant to Conn. Gen. Stat. Rev. § 52-329. For a further description of Connecticut's statutory garnishment scheme, see Part II of this opinion, *infra*.

voke the garnishment statute.[3] Mrs. Lynch alleged that she had no prior notice of the garnishment and no opportunity to be heard. She claimed that the state statutes were invalid under the Equal Protection and Due Process Clauses of the Fourteenth Amendment, and sought declaratory and injunctive relief pursuant to 42 U. S. C. § 1983[4] and its jurisdictional counterpart, 28 U. S. C. § 1343 (3).[4] A district court of three judges was convened to hear the claim under 28 U. S. C. §§ 2281 and 2284.

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[2] The second named appellant, Norma Toro, had her checking account garnished by her former landlord, one Eugene Composano. Subsequently Composano released the garnishment. An issue of mootness—which was not resolved by the District Court—is thus presented. We do not, however, reach this issue. Appellant Lynch had a savings account garnished, appellant Toro a checking account. The considerations applicable to one type of account seem identical to those applicable to the other. In this opinion, therefore, we shall only refer to the case of appellant Lynch.

An issue is also raised as to the propriety of the classes purported to be represented by the appellants and appellees. In view of our disposition of the case, we leave this issue for consideration by the District Court upon remand.

[3] The statute provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[4] The statute states in relevant part:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States . . ."

The District Court did not reach the merits of the case. It dismissed the complaint without an evidentiary hearing on the grounds that it lacked jurisdiction under § 1343 (3) and that relief was barred by the statute prohibiting injunctions against state court proceedings, 28 U. S. C. § 2283. 318 F. Supp. 1111. We noted probable jurisdiction, pursuant to 28 U. S. C. § 1253,* to consider the jurisdictional issues presented. 401 U. S. 935.

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*The appellees argue that we have no jurisdiction to consider this case on direct appeal from the three-judge District Court, 28 U. S. C. § 1253, because the court did not reach the merits of the appellant's claim for an injunction but dismissed for lack of subject matter jurisdiction.

But whether a direct appeal will lie depends on "whether the three-judge [court was] properly convened." *Moody* v. *Flowers*, 387 U. S. 97, 99. This action challenges the constitutionality of a state statute and seeks to enjoin its enforcement. The questions it raises are substantial. It, therefore, meets the requirements for convening a three-judge court. 28 U. S. C. § 2281; *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U. S. 713, 715. This case may, therefore, be distinguished from *Perez* v. *Ledesma*, 401 U. S. 82, upon which the appellees rely. In that case, we had no power to consider the merits of an appeal because the ordinance in question was neither a state statute nor of statewide application. *Perez*, *supra*, at 89 (concurring opinion). When a state statute is challenged and injunctive relief sought, we have granted direct review pursuant to § 1253 although three-judge courts dismissed for lack of subject matter jurisdiction, *Baker* v. *Carr*, 369 U. S. 186, *Abernathy* v. *Carpenter*, 373 U. S. 241, *Doud* v. *Hodge*, 350 U. S. 485, *Florida Lime Growers* v. *Jacobsen*, 362 U. S. 73, or because relief was thought to be barred by 28 U. S. C. § 2283, *Cameron* v. *Johnson*, 390 U. S. 611.

The appellees also note that § 1253 permits appeals to this Court only from orders "granting or denying . . . an interlocutory or permanent injunction . . . ." They argue that since the three-judge court never considered whether an injunction should be granted an appeal should lie to the Court of Appeals. The three-judge court, however, entered a judgment "denying all relief sought by plaintiffs." We therefore have jurisdiction to consider the claims presented.

We hold, for the reasons that follow, that neither § 1343 (3) nor § 2283 warranted dismissal of the appellant's complaint. Accordingly, we remand the case to the District Court for consideration of the remaining issues in this litigation.

I

In dismissing the appellant's complaint, the District Court held that § 1343 (3) applies only if "personal" rights, as opposed to "property" rights, are allegedly impaired. The court relied on the decision of the Court of Appeals for the Second Circuit in *Eisen* v. *Eastman*, 421 F. 2d 560, 563, which rested, in turn, on Mr. Justice Stone's well-known opinion a generation ago in *Hague* v. *CIO*, 307 U. S. 496, 531. See also, *e. g.*, *Weddle* v. *Director*, 436 F. 2d 342; *Bussie* v. *Long*, 383 F. 2d 766; *Howard* v. *Higgins*, 379 F. 2d 227.

This Court has never adopted the distinction between personal liberties and proprietary rights as a guide to the contours of § 1343 (3) jurisdiction.* Today we expressly reject that distinction.

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*The appellees cite three cases decided by this Court before *Hague* v. *CIO*, 307 U. S. 496, that, they say, support the limitation of § 1343 (3) jurisdiction to claims of deprivation of personal liberties. *Carter* v. *Greenhow*, 114 U. S. 317; *Pleasants* v. *Greenhow*, 114 U. S. 333; *Holt* v. *Indiana Mfg. Co.*, 176 U. S. 68. The appellees also rely on two recent affirmances, without opinion, of decisions by three-judge district courts dismissing § 1343 (3) suits on the ground that the rights allegedly infringed were proprietary. *Hornbeak* v. *Hamm*, 393 U. S. 9, aff'g 283 F. Supp. 549 (MD Ala. 1968); *Abernathy* v. *Carpenter*, 373 U. S. 241, aff'g 208 F. Supp. 793 (WD Mo. 1962).

All of these cases involved constitutional challenges to the collection of state taxes. Congress has treated judicial interference with the enforcement of state tax laws as a subject governed by unique considerations and has restricted federal jurisdiction accordingly:

"The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a

A

Neither the words of § 1343 (3) nor the legislative history of that provision distinguishes between personal and property rights. In fact, the Congress that enacted the predecessor of §§ 1983 and 1343 (3) seems clearly to have intended to provide a federal judicial forum for the redress of wrongful deprivations of property by persons acting under color of state law.

This Court has traced the origin of § 1983 and its jurisdictional counterpart to the Civil Rights Act of 1866, 14 Stat. 27. *Adickes* v. *Kress & Co.*, 398 U. S. 144, 162–163; *Monroe* v. *Pape*, 365 U. S. 167, 171, 183–185.[7] That Act guaranteed "broad and sweeping . . . pro-

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plain, speedy and efficient remedy may be had in the courts of such State." 28 U. S. C. § 1341.

We have repeatedly barred anticipatory federal adjudication of the validity of state tax laws. *Dows* v. *City of Chicago*, 11 Wall. 108; *Matthews* v. *Rodgers*, 284 U. S. 521; *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U. S. 293; see also *Perez* v. *Ledesma*, 401 U. S., at 126–127, n. 17 (opinion of BRENNAN, J.). The decisions cited by appellees may, therefore, be seen as consistent with congressional restriction of federal jurisdiction in this special class of cases, and with longstanding judicial policy.

[7] Section 2 of the 1866 Act was the model for § 1 of the Civil Rights Act of 1871, 17 Stat. 13. See n. 9, *infra*. Sections 1983 and 1343 (3) are direct descendants of § 1 of the Act of 1871. In 1874, Congress consolidated the various federal statutes at large under separate titles in the Revised Statutes in order to codify existing law. In the process, the substantive provision of § 1 of the 1871 Act became separated from its jurisdictional counterpart. Rev. Stat. § 1979. Although the original substantive provision had protected rights, privileges, or immunities secured by the Constitution, the provision in the Revised Statute was enlarged to provide protection for rights, privileges, or immunities secured by federal law as well.

Originally, suits under § 1 of the 1871 Act could be brought in either circuit or district court. After codification in 1874, the juris-

tection" to basic civil rights. *Sullivan* v. *Little Hunting Park*, 396 U. S. 229, 237. Acquisition, enjoyment, and alienation of property were among those rights. *Jones* v. *Mayer Co.*, 392 U. S. 409, 432.[8]

The Fourteenth Amendment vindicated for all persons the rights established by the Act of 1866. *Monroe*, *supra*, at 171; *Hague*, *supra*, at 509–510. "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee." *Shelley* v. *Kraemer*, 334 U. S. 1, 10. See also, *Buchanan* v. *Warley*, 245 U. S. 60, 74–79; H. Flack, The Adoption of the Fourteenth Amendment 75–78, 81, 90–97 (1908); J. tenBroek, The Antislavery Origins of the Fourteenth Amendment (1951).

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dictional grant to the district courts was identical in scope with the expanded substantive provision, Rev. Stat. § 563 (12). Circuit court jurisdiction was limited to claimed deprivations of rights, privileges, or immunities secured by the Constitution or by any Act of Congress "providing for equal rights." Rev. Stat. § 629 (16). In 1911, when Congress abolished the circuit courts' original jurisdiction and merged the two jurisdictional sections into what is now § 1343 (3), the "equal rights" limitation was retained in the revised jurisdictional grant. Act of Mar. 3, 1911, 36 Stat. 1087. Despite the different wording of the substantive and jurisdictional provisions, when the § 1983 claim alleges constitutional violations, § 1343 (3) provides jurisdiction and both sections are construed identically. *Douglas* v. *City of Jeannette*, 319 U. S. 157, 161.

[8] See generally Report of C. Shurz, S. Exec. Doc. No. 2, 39th Cong., 1st Sess. (1865); Cong. Globe, 39th Cong., 1st Sess., 3034–3035 and App. 219 (1866); J. tenBroek, The Antislavery Origins of the Fourteenth Amendment (1951); Frank & Munro, The Original Understanding of "Equal Protection of the Laws," 50 Col. L. Rev. 131, 144–145 (1950).

The broad concept of civil rights embodied in the 1866 Act and in the Fourteenth Amendment is unmistakably evident in the legislative history of § 1 of the Civil Rights Act of 1871, 17 Stat. 13, the direct lineal ancestor of §§ 1983 and 1343 (3). Not only was § 1 of the 1871 Act derived from § 2 of the 1866 Act,* but the 1871 Act was passed for the express purpose of "enforc[ing] the Provisions of the Fourteenth Amendment." 17 Stat. 13. And the rights that Congress sought to protect in the Act of 1871 were described by the chairman of the House Select Committee that drafted the legislation as "the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety." Cong. Globe, 42d Cong., 1st Sess., App. 69 (1871) (Rep. Shellabarger, quoting from *Corfield* v. *Coryell*, 6 F. Cas. 546, 551–552 (No. 3230) (CCED Pa.

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*Section 2 of the 1866 Civil Rights Act, 14 Stat. 27, currently codified in slightly different form as 18 U. S. C. § 242, read in pertinent part:

"[A]ny person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State . . . to the deprivation of any right *secured or protected* by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude . . . shall be deemed guilty of a misdemeanor . . . ." (Emphasis supplied.)

Section 2 provided criminal penalties for any violation of § 1 of the 1866 Act. *Screws* v. *United States*, 325 U. S. 91, 98–100. The latter section enumerated the rights the Act protected, including, *inter alia*, the right "to make and enforce contracts, to sue . . . to inherit, purchase, lease, sell, hold, and convey real and personal property. . . ."

Representative Shellabarger, chairman of the House Select Committee which drafted the Civil Rights Act of 1871, stated that

"The model for [§ 1 of the 1871 Act] will be found in the second section of the act of April 9, 1866, known as the 'civil rights act.' That section provides a criminal proceeding in identically the same case as this one provides a civil remedy . . . ." Cong. Globe, 42d Cong., 1st Sess., App. 68 (1871).

1825)). That the protection of property as well as personal rights was intended is also confirmed by President Grant's message to Congress urging passage of the legislation,[10] and by the remarks of many members of Congress during the legislative debates.[11]

B

In 1875, Congress granted the federal courts jurisdiction of "all suits of a civil nature at common law or in equity . . . arising under the Constitution or laws of the United States." 18 Stat. 470. Unlike § 1343 (3), this general federal question provision, the forerunner of 28 U. S. C. § 1331, required that a minimum amount in controversy be alleged and proved.[12] Mr. Justice Stone's opinion in *Hague, supra*, as well as the federal court decisions that followed it, *e. g.*, *Eisen* v. *Eastman*, 421 F. 2d 560, reflect the view that there is an apparent

[10] The President, in a message dated March 23, 1871, stated:

"A condition of affairs now exists in some States of the Union rendering life and property insecure . . . . I urgently recommend such legislation as in the judgment of Congress shall effectually secure life, liberty, and property, and the enforcement of law in all parts of the United States." Cong. Globe, 42d Cong., 1st Sess., 244.

[11] See, *e. g.*, Cong. Globe, 42d Cong., 1st Sess., 332–334 (Rep. Hoar); 369–370 (Rep. Monroe); 375–376 (Rep. Lowe); 429 (Rep. Beatty); 448 (Rep. Butler); 459–461 (Rep. Coburn); 475–476 (Rep. Dawes); 501 (Sen. Frelinghuysen); 568 (Sen. Edmunds); 577 (Sen. Carpenter); 607 (Sen. Pool); 650–651 (Sen. Sumner); 653 (Sen. Osborn); 666 (Sen. Spencer).

See also S. Rep. No. 1, 42d Cong., 1st Sess. (1871). Several months before the passage of the Civil Rights Act of 1871, a Senate Committee was formed to investigate conditions in the Southern States. One purpose of the investigation was to "ascertain . . . whether persons and property are secure. . . ." *Id.*, at II.

[12] The jurisdictional amount was increased from $500 to $2,000 by the Act of Mar. 3, 1887, 24 Stat. 552; to $3,000 by the Act of Mar. 3, 1911, 36 Stat. 1091; and to $10,000 by the Act of July 25, 1958, 72 Stat. 415.

conflict between §§ 1343 (3) and 1331,[13] *i. e.*, that a broad reading of § 1343 (3) to include all rights secured by the Constitution would render § 1331, and its amount-in-controversy requirement, superfluous. These opinions sought to harmonize the two jurisdictional provisions by construing § 1343 (3) as conferring federal jurisdiction of suits brought under § 1983 only when the right asserted is personal, not proprietary.

The initial failure of this reasoning is that the supposed conflict between §§ 1343 (3) and 1331 simply does not exist. Section 1343 (3) applies only to alleged infringements of rights under "color of . . . State law," whereas § 1331 contains no such requirement. Thus, for example, in suits against federal officials for alleged deprivations of constitutional rights, it is necessary to satisfy the amount-in-controversy requirement for federal jurisdiction. See *Oestereich* v. *Selective Service Board*, 393 U. S. 233; *Bivens* v. *Six Unknown Named Agents*, 403 U. S. 388.

But the more fundamental point to be made is that any such contraction of § 1343 (3) jurisdiction is not

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[13] The plaintiffs in *Hague* brought suit in a federal district court to enjoin enforcement of city ordinances prohibiting the distribution of printed matter and the holding of public meetings without a permit. They alleged that the ordinances violated the union members' right of free speech and assembly. Both the District Court and the Court of Appeals found jurisdiction under §§ 1331 and 1343 (3). This Court reversed as to jurisdiction under § 1331, since the plaintiffs had failed to establish the requisite amount in controversy. Although no opinion commanded a majority, jurisdiction under § 1343 (3) was upheld. Mr. Justice Roberts, writing the lead opinion, expressed the view that the reference in § 1343 to "any right, privilege or immunity secured by the Constitution" should be interpreted to cover only alleged violations of the Privileges and Immunities Clause of the Fourteenth Amendment. In *Monroe* v. *Pape*, 365 U. S. 167, 170–171, we rejected such a narrow reading of similar language in § 1983.

supported by the legislative history of § 1331. The 1875 Act giving the federal courts power to hear suits arising under Art. III, § 2, of the Constitution was, like the Act of 1871, an expansion of national authority over matters that, before the Civil War, had been left to the States. F. Frankfurter & J. Landis, The Business of the Supreme Court 65 (1928); *Zwickler* v. *Koota*, 389 U. S. 241, 245–248; Chadbourn & Levin, Original Jurisdiction of Federal Questions, 90 U. Pa. L. Rev. 639, 645 (1942). The Act, therefore, is "clearly . . . part of, rather than an exception to, the trend of legislation which preceded it." Chadbourn & Levin, *supra*, at 645; *Zwickler*, *supra*. There was very little discussion of the measure before its enactment, in contrast to the extensive congressional debate that attended the passage of the Act of 1871.[14] And there is, as a result, no indication whatsoever that Congress, in a rather hastily passed measure, intended to narrow the scope of a provision passed four years earlier as part of major civil rights legislation.[15]

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[14] "[A] study of the history of the bill as revealed by the Congressional Record yields no reason for its enactment at that time, and may even be said to raise a strong presumption that it was 'sneak' legislation. It was originally introduced in the House of Representatives in the form of a bill to amend the removal statute." Chadbourn & Levin, Original Jurisdiction of Federal Questions, 90 U. Pa. L. Rev. 639, 642–643 (1942). Nonetheless, the passage of the Act, despite the lack of debate, has been regarded as the "culmination of a movement . . . to strengthen the Federal Government against the states." F. Frankfurter & J. Landis, The Business of the Supreme Court 65 n. 34 (1928). See also Maury, The Late Civil War, Its Effect on Jurisdiction, and on Civil Remedies Generally, 23 Am. L. Reg. 129 (1875).

[15] As noted, Congress in 1875 also enlarged the scope of § 1983's predecessor to protect rights secured by federal law as well as rights secured by the Constitution. See n. 7, *supra*. Moreover, when Congress increased the amount-in-controversy requirement to $3,000 in 1911, 36 Stat. 1091, there was no indication that jurisdiction

The "cardinal rule . . . that repeals by implication are not favored," *Posadas* v. *National City Bank*, 296 U. S. 497, 503, *Jones* v. *Mayer Co.*, 392 U. S., at 437, thus counsels a refusal to pare down § 1343 (3) jurisdiction—and the substantive scope of § 1983—by means of the distinction between personal liberties and property rights, or in any other way. The statutory descendants of § 1 of the Civil Rights Act of 1871 must be given the meaning and sweep that their origins and their language dictate.[16]

Moreover, although the purpose of the amount-in-controversy requirement is to reduce congestion in the federal courts, S. Rep. No. 1830, 85th Cong., 2d Sess. (1958), Congress has substantially lessened its importance with respect to § 1331 by passing many statutes that confer federal-question jurisdiction without an amount-in-controversy requirement.[17] So it was that

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under what is now § 1343 (3) was to be reduced. In fact, the legislation explicitly preserved the exemption of action brought under § 1343 (3)'s predecessor from the amount-in-controversy requirement.

[16] In *United States* v. *Price*, 383 U. S. 787, 797, we interpreted the phrase "rights, privileges, or immunities secured . . . by the Constitution or laws of the United States," contained in 18 U. S. C. § 242, to embrace "*all* of the Constitution and laws of the United States." The similar language in §§ 1983 and 1343 (3) was originally modeled on § 242's predecessor, § 2 of the Civil Rights Act of 1866. See n. 9, *supra*. In *Price*, *supra*, we said that "[w]e are not at liberty to seek ingenious analytical instruments" to avoid giving a congressional enactment the scope that its language and origins require. *Id.*, at 801.

[17] A series of particular statutes grant jurisdiction, without regard to the amount in controversy, in virtually all areas that otherwise would fall under the general federal-question statute. Such special statutes cover: admiralty, maritime, and prize cases, 28 U. S. C. § 1333; bankruptcy matters and proceedings, 28 U. S. C. § 1334; review of orders of the Interstate Commerce Commission, 28 U. S. C. § 1336; cases arising under any Act of Congress regulating commerce,

when Congress increased the jurisdictional amount from $3,000 to $10,000, Act of July 25, 1958, 72 Stat. 415, it made clear that its primary concern was to reduce the federal judiciary's workload with regard to cases arising under federal diversity jurisdiction, 28 U. S. C. § 1332, not under § 1331.[14]

A final, compelling reason for rejecting a "personal liberties" limitation upon § 1343 (3) is the virtual im-

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28 U. S. C. § 1337; patent, copyright, and trademark cases, 28 U. S. C. § 1338; postal matters, 28 U. S. C. § 1339; internal revenue and custom duties actions, 28 U. S. C. § 1340; election disputes, 28 U. S. C. § 1344; cases in which the United States is a party, 28 U. S. C. §§ 1345, 1346, 1347, 1348, 1349, 1358, and 1361; certain tort actions by aliens, 28 U. S. C. § 1350; actions on bonds executed under federal law, 28 U. S. C. § 1352; cases involving Indian allotments, 28 U. S. C. § 1353; and injuries under federal law, 28 U. S. C. § 1357.

[14] "While this bill applies the $10,000 minimum limitation to cases involving Federal questions, its effect will be greater on diversity cases since many of the so-called Federal question cases will be exempt from its provisions." S. Rep. No. 1830, 85th Cong., 2d Sess., 6 (1958). The Senate report was echoing the finding of the Judicial Conference's Committee on Jurisdiction and Venue that raising the jurisdictional amount would "have significant effect mainly upon diversity cases." *Id.*, at 22.

Recent studies have demonstrated that the amount-in-controversy requirement still has "relatively little impact on the volume of federal question litigation." American Law Institute, Study of the Division of Jurisdiction Between State and Federal Courts 172, 489–492 (1969). See also, Warren, Address to the American Law Institute, 1960, 25 F. R. D. 213; C. Wright, Law of Federal Courts 107 (2d ed. 1970). Information from the Administrative Office of the United States Courts shows that a majority of private federal-question cases involve less than $10,000. American Law Institute, *supra*, at 491.

Although litigation involving federal civil rights is increasing, such actions constituted only 4.6% of the suits instituted in district courts during the 1970 fiscal year. Administrative Office of the United States Courts, 1970 Report, II–31.

possibility of applying it."[19] The federal courts have been particularly bedeviled by "mixed" cases in which both personal and property rights are implicated, and the line between them has been difficult to draw with any consistency or principled objectivity."[20] The case

[19] As noted above, we have never adopted the property rights-personal liberties test for § 1343 (3) jurisdiction. In *Elsen* v. *Eastman*, 421 F. 2d 560, the Court of Appeals for the Second Circuit said that application of the test would bar many welfare claims. *Id.*, at 566 n. 10. We have, however, continually found § 1343 (3) jurisdiction in such cases. See, *e. g.*, *California Department of Human Resources* v. *Java*, 402 U. S. 121; *Rosado* v. *Wyman*, 397 U. S. 397; *King* v. *Smith*, 392 U. S. 309; *Goldberg* v. *Kelly*, 397 U. S. 254; *Dandridge* v. *Williams*, 397 U. S. 471; *Damico* v. *California*, 389 U. S. 416.

See also *Rinaldi* v. *Yeager*, 384 U. S. 305; *Swarb* v. *Lennox*, *ante*, p. 191; *Lindsey* v. *Normet*, *ante*, p. 56. These cases, arguably, involved only deprivations of property, but we found § 1343 (3) jurisdiction nonetheless.

[20] Difficulty in application has been one source of the commentators' dissatisfaction with the "personal liberties" limitation. See generally Note, 24 Vand. L. Rev. 990 (1971); Laufer, *Hague* v. *C. I. O.*: Mr. Justice Stone's Test of Federal Jurisdiction—A Reappraisal, 19 Buff. L. Rev. 547 (1970); Note, 1970 Duke L. J. 819; Note, 43 N. Y. U. L. Rev. 1208 (1968); Note, 66 Harv. L. Rev. 1285 (1953).

The federal courts have produced inconsistent results regarding § 1343 (3) jurisdiction of welfare claims. Compare *Roberts* v. *Harder*, 440 F. 2d 1229, with *Alvarado* v. *Schmidt*, 317 F. Supp. 1027. See also n. 19, *supra*. Yet without always explaining why such interests are "personal" rather than "proprietary," courts have consistently found civil rights jurisdiction over suits alleging discrimination in the issuance of business licenses. See, *e. g.*, *Barnes* v. *Merritt*, 376 F. 2d 8; *Glicker* v. *Michigan Liquor Control Comm'n*, 160 F. 2d 96. Similarly, claims involving discrimination in employment, *e. g.*, *Birnbaum* v. *Trussell*, 371 F. 2d 672, or termination of leases in public housing projects, *e. g.*, *Escalera* v. *New York City Housing Authority*, 425 F. 2d 853, are often found cognizable under § 1343 (3). How such "personal" interests are to be distinguished from the "property" interest in wages deposited in a savings account, as in this case, is not readily discernible. Compare this case with *Santiago* v. *McElroy*, 319 F. Supp. 284.

before us presents a good example of the conceptual difficulties created by the test.[21]

Such difficulties indicate that the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a "personal" right, whether the "property" in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized. J. Locke, Of Civil Government 82–85 (1924); J. Adams, A Defence of the Constitutions of Government of the United States of America, in F. Coker, Democracy, Liberty, and Property 121–132 (1942); 1 W. Blackstone, Commentaries *138–140. Congress recognized these rights in 1871 when it enacted the predecessor of §§ 1983 and 1343 (3). We do no more than reaffirm the judgment of Congress today.

II

Under 28 U. S. C. § 2283, federal courts may not "grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." The District Court relied upon this statute as an alternative ground for the dis-

[21] The District Court found that access to funds held in a savings account was indistinguishable from simple ownership of money. Thus garnishment of that account did not infringe personal rights. Mrs. Lynch, however, alleged that because of the garnishment she was unable to pay her rent on time and encountered difficulty maintaining her family on a minimally adequate diet. If these allegations are true, Mrs. Lynch's personal liberty could be profoundly affected by garnishment of her savings.

missal of the appellant's complaint. The appellant contends that § 2283 is inapplicable to this case because prejudgment garnishment under Conn. Gen. Stat. Rev. § 52-329 [23] is not a proceeding in state court. We agree."

In Connecticut, garnishment is instituted without judicial order. *Ibid.*; 1 E. Stephenson, Connecticut Civil Procedure 151 (2d ed. 1970).[24] The levy of garnishment—usually effected by a deputy sheriff—does not confer jurisdiction on state courts and may, in fact,

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[23] The statute provides:

"When the effects of the defendant in any civil action in which a judgment or decree for the payment of money may be rendered are concealed in the hands of his agent or trustee so that they cannot be found or attached, or when a debt is due from any person to such defendant, or when any debt, legacy or distributive share is or may become due to such defendant from the estate of any deceased person or insolvent debtor, the plaintiff may insert in his writ a direction to the officer to leave a true and attested copy thereof and of the accompanying complaint, at least twelve days in the case of the superior court or the court of common pleas, or six days in the case of the circuit court, before the session of the court to which it is returnable, with such agent, trustee or debtor of the defendant, or, as the case may be, with the executor, administrator or trustee of such estate, or at the usual place of abode of such garnishee; and from the time of leaving such copy all the effects of the defendant in the hands of any such garnishee, and any debt due from any such garnishee to the defendant, and any debt, legacy or distributive share, due or that may become due to him from such executor, administrator or trustee in insolvency, not exempt from execution, shall be secured in the hands of such garnishee to pay such judgment as the plaintiff may recover."

[24] Cf. *Roudebush* v. *Hartke*, *ante*, p. 15.

[24] Garnishment occurs at the beginning of the suit upon the direction of the plaintiff's lawyer, acting as a Commissioner of the Superior Court. Conn. Gen. Stat. Rev. §§ 51-85, 52-89. "The plaintiff or his attorney merely includes in his writ of summons a direction to the sheriff to make an attachment or serve garnishment process." 1 E. Stephenson, Connecticut Civil Procedure 151 (2d ed. 1970).

occur prior to commencement of an alleged creditor's suit. *Young* v. *Margiotta*, 136 Conn. 429, 433, 71 A. 2d 924, 926. Despite the state court's control over the plaintiff's docketed case, garnishment is "distinct from and independent of that action." *Potter* v. *Appleby*, 136 Conn. 641, 643, 73 A. 2d 819, 820. The garnished property is secured, not under authority of the court, but merely in the hands of the garnishee. Conn. Gen. Stat. Rev. § 52–329. Prejudgment garnishment is thus levied and maintained without the participation of the state courts.

In this case, the appellant sought to enjoin garnishment proceedings, not the finance company's suit on the promissory note. The District Court noted that "garnishment may be separated from the underlying in personam action," but held that § 2283 was a bar because the interference with existing creditors' suits caused by such an injunction "probably would be substantial." 318 F. Supp., at 1115. According to the appellees, interference would occur because garnishment is necessary to make any eventual judgment in the pending state suit effective. *Hill* v. *Martin*, 296 U. S. 393, 403.

This argument is not persuasive in the context of the Connecticut prejudgment garnishment scheme. Garnishment *might* serve to make a *subsequent* judgment effective. Cf. *Hill, supra; Manufacturers Record Publishing Co.* v. *Lauer*, 268 F. 2d 187, cert. denied, 361 U. S. 913; *Furnish* v. *Board of Medical Examiners of California*, 257 F. 2d 520, cert denied, 358 U. S. 882. But the garnishment was, in this case, an action taken by private parties who were not proceeding under a court's supervision [25] and who were using, as agents,

[25] The fact that the plaintiffs' attorneys are, formally, officers of the court does not convert the Connecticut garnishment process into a state court proceeding for § 2283 purposes, since the attorneys

state officials who were themselves not acting pursuant to a court order or under a court's authority.

In *Hill*, *supra*, we said that the "proceeding" that a federal court is forbidden to enjoin "includes all steps taken or which may be taken *in the state court or by its officers* from the *institution* to the close of the final process." *Id.*, at 403 (emphasis supplied). In this case, the garnishment occurred before the appellee corporation had served the appellant with process.

More important, the state court and its officers are insulated from control over the garnishment. Connecticut appears to be one of the few States authorizing an attorney for an alleged creditor to garnish or attach property without any participation by a judge or clerk of the court. Stephenson, *supra*, at 230. A person whose account has been seized can get only minimal relief at best.[26] The state courts have held that they cannot enjoin a garnishment on the ground that it was levied unconstitutionally. *Michael's Jewelers* v. *Handy*, 6 Conn. Cir. 103, 266 A. 2d 904; *Harris* v. *Barone*, 147 Conn. 233, 158 A. 2d 855. One assumption underlying § 2283 is that state courts will vindicate constitutional claims as fairly and efficiently as federal courts. But this assumption cannot obtain when the doors of the

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have complete discretion to issue a writ. See n. 24, *supra*; *Sharkiewicz* v. *Smith*, 142 Conn. 410, 114 A. 2d 691; *Sachs* v. *Nussenbaum*, 92 Conn. 682, 104 A. 393.

[26] The courts have no authority to inquire into the probable validity of the creditor's claim, or whether special circumstances warrant provisional security for an alleged creditor. *Sachs* v. *Nussenbaum*, 92 Conn., at 689, 104 A., at 395. Prior to the termination of the litigation, a garnishment may be reduced or dissolved only upon a showing that the garnishment is excessive—*i. e.*, in excess of the creditor's apparent claim—or upon substitution of a bond with surety. Conn. Gen. Stat. Rev. §§ 52-302 and 52-304. *Black Watch Farms* v. *Dick*, 323 F. Supp. 100, 101-102. This involvement has been termed "meager." Stephenson, *supra*, at 154.

state courts are effectively closed to a person seeking to enjoin a garnishment on constitutional grounds.

Because of the extrajudicial nature of Connecticut garnishment, an injunction against its maintenance is not, therefore, barred by the terms of § 2283. In light of this conclusion, we need not decide whether § 1983 is an exception to § 2283 "expressly authorized by Act of Congress." We have explicitly left that question open in other decisions.[*] And we may put it to one side in this case because the state act that the federal court was asked to enjoin was not a proceeding "in a State court" within the meaning of § 2283.

We conclude, therefore, that the District Court had jurisdiction to entertain the appellant's suit for an injunction under § 1983. Accordingly, the judgment before us is reversed, and the case remanded for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN join, dissenting.

I agree with the Court that federal jurisdiction under 28 U. S. C. § 1343 is not limited to the adjudication of personal rights and if the disposition of this case turned solely on that issue I would without reservation join in the majority opinion. But I cannot agree either with the approach that the majority takes to the anti-

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[*] See *Dombrowski* v. *Pfister*, 380 U. S. 479, 484 n. 2; *Cameron* v. *Johnson*, 390 U. S., at 613 n. 3; *Younger* v. *Harris*, 401 U. S. 37, 54. The circuits have divided on the question. Cf., *e. g.*, *Cooper* v. *Hutchinson*, 184 F. 2d 119, and *Baines* v. *City of Danville*, 337 F. 2d 579.

injunction statute, 28 U. S. C. § 2283, or its conclusion that the statute does not bar this suit. I do not mean to suggest that appellants' due process attack on the Connecticut garnishment statute is not substantial. It obviously is. *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337 (1969). Nevertheless, in my view, appellants should be required to press their constitutional attack in the state courts.

In Connecticut garnishment or attachment is one method of beginning a lawsuit. Conn. Gen. Stat. Rev. § 52–329; 1 E. Stephenson, Connecticut Civil Procedure 156–157, 232–237 (2d ed. 1970). Of course, the requisite personal service upon a defendant is necessary to obtain *in personam* jurisdiction, Conn. Gen. Stat. Rev. § 52–54, as well as to secure an effective garnishment, Stephenson, *supra*, at 244, but as a matter of right in certain kinds of civil actions a plaintiff may simultaneously garnish a defendant's bank account and serve a summons upon the defendant, together with a complaint stating the nature of the underlying action. Conn. Gen. Stat. Rev. § 52–329. A state court obtains jurisdiction of the action and of questions concerning the garnishment when return of process is made to that court. Stephenson, *supra*, at 67. Garnishment is "ancillary to the main action for damages and cannot exist without such action." *Id.*, at 143. Its purpose, as the majority notes, is to secure property which will thus be made available for the satisfaction of a judgment. *Ibid.* A writ of garnishment may be issued by a judge of the court of jurisdiction, Conn. Gen. Stat. Rev. § 52–89 (Supp. 1969), but because garnishment in Connecticut, unlike most other States, is a matter of right and requires no prior judicial determination, the writ may also be issued by a court clerk or licensed attorney. Conn. Gen. Stat. Rev. § 51–85. In either

case the matter is accomplished simply by completing a form.

Appellant Lynch brought this federal action to enjoin the garnishment more than seven months after the writ had been executed, the summons and complaint served, process returned, and the case docketed in Connecticut court. At the earliest moment that a federal injunction could have issued the state court proceeding was well under way. Despite this, the majority purports to sever the garnishment from the action that underlies it. The Court reasons that Connecticut garnishment is not a proceeding in state court because it is carried out by private parties not acting pursuant to a court order. *Ante*, at 554–555.

If the majority means that garnishment is a severable matter, independent of the main suit and for that reason outside of § 2283, then I would suppose it permissible for a federal court to enjoin any garnishment or attachment, whether obtained at the inception of a lawsuit, while it is in progress, or after judgment and for the purpose of execution. This approach to the anti-injunction statute, articulated in *Simon* v. *Southern R. Co.*, 236 U. S. 115, 124–125 (1915), was, I thought, laid to rest in *Hill* v. *Martin*, 296 U. S. 393, 403 (1935), where the Court construed "proceedings in any court of a State" comprehensively and as embracing

> "all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process. It applies to appellate as well as to original proceedings; and is independent of the doctrine of *res judicata*. It applies alike to action by the court and by its ministerial officers; applies not only to an execution issued on a judgment, but to any proceeding supplemental or an-

cillary taken with a view to making the suit or judgment effective." (Footnotes omitted.)

The Court today embarks on quite a different course and rejects not only *Hill* v. *Martin* but also a substantial body of federal court of appeals law to the effect that § 2283 bars federal court interference with executions on state court judgments. *E. g., Manufacturers Record Publishing Co.* v. *Lauer*, 268 F. 2d 187 (CA5), cert. denied, 361 U. S. 913 (1959); *Furnish* v. *Board of Medical Examiners of California*, 257 F. 2d 520 (CA9), cert. denied, 358 U. S. 882 (1958); *Norwood* v. *Parenteau*, 228 F. 2d 148 (CA8 1955), cert. denied, 351 U. S. 955 (1956).[1]

The Court also suggests that § 2283 is inapplicable here because no Connecticut court authorized the garnishment. Its view apparently is that a federal injunction would therefore not interfere with state court processes. Until now, however, it has been reasonably clear that § 2283 cannot be avoided by the simple expedient of enjoining parties instead of judges. *Oklahoma Packing Co.* v. *Oklahoma Gas & Electric Co.*, 309 U. S. 4, 9 (1940). Moreover, the Court's rationale proves too much. Contrary to the views expressed in *Hill* v. *Martin*, *supra*, state court ministerial officers could be enjoined at any time and for any purpose in the course of a litigation and without regard to § 2283. In addition, parties to state court litigation could be enjoined from performing any one or all of the tasks essential to the orderly progress of litigation so long as the acts in question are not carried out pursuant to court order. Depositions of parties and witnesses, interrogatories to parties, and subpoenas for witnesses are commonly pur-

[1] Some confusion persists whether a federal court may, consistently with § 2283, enjoin the operation of a state court judgment procured by fraud. See C. Wright, Law of Federal Courts 179–181 (2d ed. 1970). That question is not presented here.

sued without resort to a judge. Are these and other functions not performed under court order now subject to attack in federal court at the option of the offended state court litigant?

Today's decision will, I fear, create confusion by making the applicability of § 2283 turn on rules that are difficult to apply. The potential for conflict between state and federal courts will increase and the price for judicial errors will be paid by litigants and courts alike. The common sense of the matter, it seems to me, is that the garnishment at issue here is part and parcel of a state court proceeding now under way. Garnishment in Connecticut may be characterized as separate from the underlying action, but it is nonetheless a proceeding and derives its legitimacy from the suit it accompanies. At the time this federal action was brought, return of process had long since been completed and the state court had acquired jurisdiction of a straightforward cause of action, including questions of the legitimacy and constitutionality of the garnishment.

It also seems to me that, quite apart from § 2283, today's holding departs from such cases as *Stefanelli* v. *Minard*, 342 U. S. 117 (1951), and *Perez* v. *Ledesma*, 401 U. S. 82 (1971), which counsel against atomizing state litigation by enjoining, for example, the introduction of illegally obtained evidence, as well as from the more general admonitions of *Younger* v. *Harris*, 401 U. S. 37 (1971); *Samuels* v. *Mackell*, 401 U. S. 66 (1971); *Boyle* v. *Landry*, 401 U. S. 77 (1971); and *Perez* v. *Ledesma*, 401 U. S. 82, against improvident exercise of a federal court's equitable powers to frustrate or interfere with the operations of state courts by adjudicating federal questions that are involved in state court litigation and which can be adjudicated there. As the Court said in *Stefanelli*, if such interventions were to be permitted, "[e]very question of procedural due

process of law—with its far-flung and undefined range—would invite a flanking movement against the system of State courts by resort to the federal forum, with review if need be to this Court, to determine the issue." 342 U. S., at 123. Such resort, if permitted, "would provide ready opportunities, which conscientious counsel might be bound to employ, to subvert the orderly, effective prosecution of local crime in local courts." *Id.*, at 123–124.

Appellee Barrett invokes *Younger* and companion cases as a ground for affirming the judgment of the District Court. Of course, those cases involved federal injunctions against state criminal proceedings, but the relevant considerations, in my view, are equally applicable where state civil litigation is in progress, as is here the case.[2]

I would affirm the judgment of the court below.

[2] I thus would affirm whether or not 42 U. S. C. § 1983 is an exception to the bar of § 2283. That question is at issue in *Mitchum* v. *Foster*, No. 70-27, now *sub judice*.